THE

MADRAS LAW JOURNAL

DEPARTMENT OF LAW
UNIVERSITY OF CALCUTTA
NOT TO BE REMOVED

EDITORIAL COMMITTEE.

RAO BAHADUR K. V. KRISHNASWAMI AIYAR, B.A., B.L.
MR. T. M. KRISHNASWAMI AIYAR, B.A., B.L.
„ B. V. VISWANATHA AIYAR, M.A., B.L., *Government Pleader*
„ M. SUBBARAYA AIYAR, B.A., B.L.
„ D. RAMASWAMI AYYANGAR, B.A., B.L.

OFFICIATING EDITOR.

MR. K. SANKARANARAYANAN, B.A., B.L.

REPORTERS.

MR. GANPAT RAI, B.A., LL.B., *Advocate, Supreme Court.*
„ S. V. VENUGOPALACHARI, B.A., B.L., *High Court.*
„ P. R. NARAYANA IYER, B.A., B.L., „
„ R. MATHRUBUTHAM, B.A., B.L., „
„ V. SWAMINATHAN, B.SC., B.L., „

104

(1958) I M.L.J.
January—June.

UNIVERSITY LIBRARY LAW COLLEGE

PUBLISHED BY
MR. N. RAMARATNAM, M.A., B.L.,
AND
PRINTED AT THE M. L. J. PRESS (PRIVATE), LTD.
MYLAPORE, MADRAS 4.
[*All Rights Reserved.*]
1958.

Department of Law Library
Acc. No. 72032
Date...............
C. U.

HAZRA LAW CAMPUS LIBRARY
Acc. No...............
Date...............
UNIVERSITY OF CALCUTTA

LP 2321

UNIVERSITY
LIBRARY.
LAW COLLEGE

CONTENTS

ARTICLES.

PAGE.

On Ancient and Present Legal Systems of China, by S. Varadarajulu Naidu, B.A., B.L., District and Sessions Judge, Ramanathapuram at Madurai .. 47

Appeal Against Acquittal and The Doctrine of Compelling Reasons, by H. G. Panda, Advocate, Orissa High Court .. 29

Constitutional Provisions as to The Law of Contempt, by V. G. Ramachandran, M.A., B.L., New Delhi .. 51

Control of The Legislative Powers of Administration, by N. C. Chatterjee, Barrister at Law, Senior Advocate, Supreme Court of India .. 19

Does Article 226 of The Constitution Need Any Amendment? by S.M. Sikri, Advocate-General, Punjab .. 11

Industrial Relations in India, by S. N. Dhyani, Lecturer in Law, Lucknow University .. 59

Injunctions against *ultra vires* Acts of Companies, by Avtar Singh, Lecturer in Law, Lucknow University .. 55

A Law Suit That was Adjourned for A Hundred Years, by S. Varadarajulu Naidu, District and Sessions Judge of Ramanathapuram at Madurai .. 10

Letter to the Editor: Enrolment, of Pleaders as Advocates .. 10

Madras Agriculturists Relief Act, section 13-A, by G. V. Venkatarama Ayyar, Advocate, Kumbakonam .. 33

The Need for Judicial Corrective in Administrative Proceedings, by Shri V.G. Ramachandran, Advocate, Tirukoilur (S. India) .. 1

New Judge of The Madras High Court .. 9

Offences Against Religion (A Critical Review of Ramji Lal Modi *v.* State of U. P.), by D. C. Pande, Lecturer in Law, Lucknow University .. 42

Past Consideration A Note, by K. Ponnuswami, M.L., Lecturer, Faculty of Law, Delhi University .. 35

Responsibility of The Minister in Public Administration: A Comparative Study, by C.S. Subramania Aiyar, Advocate, Madras .. 25

Some Aspects of The Law of Compensation for Railway Accidents, by M. Muthuswamy, B.A. B.L., Advocate, Tiruchirapalli .. 31

Stamp Duties and State Legislation, by K. Krishnamurthi, Retd. Assistant Registrar, High Court, Madras .. 49

SUPPLEMENT.

Our Felicitations to Hon'ble Sri K. Subba Rao, Chief Justice, High Court of Andhra Pradesh, Hyderabad, and Judge-designate, Supreme Court of India .. 1

BOOK REVIEWS.

PAGE.

The Banking Companies Act, 1949, by K. M. Ghosh, Advocate, Calcutta, Published by Eastern Law House, Private Ltd., 54 Ganesh Chunder Avenue, Calcutta 13, 1957, Price Rs. 6. .. 72

Central Sales Tax Act, 1956, by R. V. Patel, Published by M/s. N. M. Tripathi (Private) Ltd., Bombay-2. Price Rs. 12 .. 54

Central Sales Tax Act, 1956, with Commentaries, Rules and Notifications by B. L. Dalmia, B. COM., L.L.B., Advocate, High Court. (Published in four parts by Law Chamber, Law Book Publishers, 134, Mahatma Gandhi Road, Calcutta. Price Rs. 3-50 nP. per part. .. 54

Commentary on the Central Sales Tax Act with Rules and Notifications by A. G. Roy, M.A., B.L., Advocate, and Asst. Editor, Patna Law Reporter. Published by Pahuja Bros. Law Book Sellers and Publishers, Patna-3 Price Rs. 5-75 nP. .. 54

Criminology, Criminal Law and Investigation by R. Deb, B.A., (HONS.) B.L., Chief Law Instructor, Central Police Training College, Mt. Abu. Published by S.C. Sarkar and Sons (Private) Ltd., 1-C, College Square, Calcutta-12. Price Rs. 18 .. 71

Ganguly's Civil Court Practice and Procedure, VI Edn. (1958) by Shambudas Mitra, Advocate, Calcutta. Published by Eastern Law House (Private) Ltd., Calcutta. Price Rs. 14 .. 72

The Motor Vehicles Act, 1939, with notes. Published by Sundaram Industries (Private) Ltd., Madras (1958), Price Rs. 25 .. 71

Partition Act, 1893, by Mahindra Nath Das, West Bengal Civil Service (Judicial). Published by S.C. Sarkar and Sons (Private) Ltd, 1-C, College Square, Calcutta-12 (1958), Price Rs. 2-50 nP. .. 71

Principles of Sales Tax Laws by Kharag Ram Chaturvedi, B.L., Published by Eastern Law House (Private) Ltd., 54, Ganesh Chunder Avenue, Calcutta-13, (1958), Price Rs. 16 .. 72

MARCH OF LAW.

	Page.
Bar in Relation to the Courts ..	1
Civil Procedure Code ..	12
Company Law ..	6
Constitutional Law ..	2
Contracts ..	6
Court-Fees Act ..	10
Criminal Law ..	14
Hindu Law ..	9
Industrial Disputes Act ..	4
Industrial Disputes (Appellate Tribunal) Act ..	5
Insolvency ..	11
Limitation Act ..	11
Madras Agriculturists Relief Act ..	9
Madras Estates Abolition and Conversion into Ryotwari Act ..	8
Madras Estates Land Act ..	7
Private International Law ..	1
Property Law ..	7

NOTES OF INDIAN CASES REPORTED.

	Page.
Chinnappa Chetty *v.* Gopala Chetty & Bros., (1953) 2 M.L.J. 296 ..	26
Deoki Nandan *v.* Murlidhar, (1957) 1 M.L.J. (S.C.) 28 ..	9
Dharmapuram Mutt *v.* Collector of Trichinopoly, (1957) 2 M.L.J. 97 ..	17
The Indian Insurance & Banking Corporation. Ltd., Salem *v.* Paramasiva Mudaliar, (1957) 2 M.L.J. 256 ..	25
Kandan Kunhiraman, *In re*, (1957) 1 M.L.J. 151 ..	11
Kuppammal *v.* Devendra Iyer, (1957) 2 M.L.J. 134 ..	22
Lakshmi Reddy *v.* Lakshmi Reddy, (1957) 1 M.L.J. (S.C.) 46 ..	15
Madala Thathiah *v.* Union of India, (1956) 2 M.L.J. 584 ..	5
Manicka Goundan *v.* Elumalai Goundan, (1956) 2 M.L.J. 536 ..	2
Murugan, *In re*, (1957) 2 M.L.J. 9 ..	18
Natarajan *v.* Regional Transport Officer, Chingleput, (1957) 2 M.L.J. 233, V. C. K. Bus Service, Ltd. *v.* Regional Authority, Coimbatore, (1957) 2 M.L.J. (S.C.) 43 ..	14
Parvathi Ammal *v.* Gopala Goundar, (1956) 2 M.L.J. 468 ..	1
Perundevi Ammal *v.* Amavasikan, (1956) 2 M.L.J. 610 ..	6
Ponnuswami Chettiar *v.* Vellaimuthu Chettiar, (1957) 1 M.L.J. 179 ..	13
Raja Rajeswari Ambal *v.* District Board, Tinnevelly, (1957) 2 M.L.J. 73 ..	17
Rangaswami Reddi *v.* Doraiswami Reddi, (1957) 2 M.L.J. 196	23
Sakharama Rao *v.* Nagasami Rao, (1957) 1 M.L.J. 3 ..	8
Srinivasa Sastri *v.* Sri Sankaracharlar, (1957) 2 M.L.J. 144 ..	22
Subramaniam Chettiar *v.* Muthiah Pillai, (1957) 1 M.L.J. 147 ..	11
Syamalambal *v.* Namberumal Chettiar, (1957) 1 M.L.J. 118 ..	10
Thangavelu Asari *v.* Lakshmi Ammal, (1957) 2 M.L.J. 132 ..	21
Tirumalai Naidu *v.* Challapathi Naidu, (1957) 1 M.L.J. 349 ..	15
I. S. Vasudeva Bhat, *In re* (1957) 1 M.L.J. 165 ..	12
C. D. Venkataraman, *In re*, (1957) 1 M.L.J. 26. ..	9

CASES CITED IN THE NOTES OF INDIAN CASES.

PAGES.

Abdul Hakim v. Ebrahim, (1920) 32 Cal. L.J. 132 .. 13
Amar Singh Rangaraju v. State, (1956) Cal. L.J. 408 .. 20
Amerchand v. Nathu, (1910) 7 All. L.J. 887 .. 3
Anantha Kumar v. Surendra Kumar, I.L.R. (1948) 1 Cal. 275 : A.I.R. 1947 Cal. 424 .. 22
Anantha Rao v. Surayya, (1919) 38 M.L.J. 256 : I.L.R. 43 Mad. 793 .. 24
Angammal v. Muhammad Sulaiman Labbai, (1945) 2 M.L.J. 239 .. 11
Aniruddha Mitra v. Official Receiver, I.L.R. (1942) 1 Cal. 427 .. 17
Anjiah v. Regional Transport Officer, Guntur, (1956) An. W.R. 344 .. 14
Annapurnamma v. Akkayya, (1913) 21 M.L.J. 333 : I.L.R. 36 Mad. 544 (F.B.) .. 8
Arunachalam v. Lingiah, (1952) 2 M.L.J. 347 .. 22
Arunachalam Chetty v. S..hiah Chetty, (1938) 2 M.L.J. 701 .. 21
Arunachalathammal v. Kanagasabapathi Pillai, (1955) 1 M.L.J. 285 .. 22
Audikesavalu v. Ramanujam, (1909) I.L.R. 32 Mad. 512 .. 1
Balkishen Das v. Bechan Pandey, (1931) I.L.R. 54 All. 68 .. 4
Bangaru Reddy v. Mangammal, (1946) 2 M.L.J. 377 .. 21
Barber Maran v. Ramana, (1897) 7 M.L.J. 269 : I.L.R. 20 Mad. 461 .. 8
Bateman v. Olivia, Countess of Ross, (1813) 1 Dow. 235 : 3 E.R. 684 .. 6
Bertrand v. Davies, (1862) 31 Beav. 429 .. 16
Bhupati Nath Smrititirtha v. Ram Lal Maitra, (1910) I.L.R. 37 Cal. 128 (F.B.) .. 9
Chairman, Municipal Council, Chidambaram v. Thirunarayana Iyengar, (1927) 55 M.L.J. 566 : I.L.R. 51 Mad. 876 .. 12
Chitturi Suriah v. Boddu Ramayya, (1915) M.W.N. 150 .. 24
Chunilal Dayabhai and Co. v. The Ahmedabad Fine Spinning and Weaving Co., Ltd., (1921) I.L.R. 46 Bom. 806 .. 6
Corea v. Appuhamy, L.R. (1912) A.C. 230 .. 16
Cully v. Doe d Taylerson, 3 P. and D. 539 : 52 R.R. 566 .. 16
David Chellayya v. State, A.I.R. 1957 Trav.-Co. 89 .. 12
Davidson v. Cooper, (1844) 13 M. & W. 343 : 153 E.R. 142 .. 23
De Thoren v. Attorney-General, L.R. (1876) 1 A.C. 686 .. 1
Dhanno Khan v. The State, A.I.R. 1957 All. 317 .. 21
Ellen Ma Noo v. William Po Thit, (1924) I.L.R. 2 Rang. 163 .. 7
Fisher v. Dixon, (1845) 12 Cl. & F. 312 .. 25
Forbes v. Gil, L.R. (1922) 1 A.C. 256, 259 (P.C.) .. 5
Furnivall v. Coombes, (1843) 5 Man. and G. 736 : 134 E.R. 756 .. 5, 6
Gardner v. Walsh, (1855) 5 E. & B. 83 : 119 E.R. 412 .. 23
Gopalakrishna v. Sarvagna Krishna, (1955) An. W.R. 590 .. 17
Govindaswami v. Kuppuswami, (1889) I.L.R. 12 Mad. 239 .. 23
Gullvick v. Swindell, (1860) L.R. 3 Eq. 249 .. 25
Haddon v. Haddon, (1887) 18 Q.B.D. 778 .. 6
Harilal v. Mulchand, (1928) I.L.R. 52 Bom. 883 .. 18
Hindu Religious Endowments Board v. Veeraraghavachariar, A.I.R. 1937 Mad. 750 .. 9
Holmes v. Director of Public Prosecutions, 1946 All E.R. 124 .. 19
Hong Kong and Shanghai Bank v. Lo Lan Shi, L.R. (1928) A.C. 181 (P.C.) .. 23, 24
Hutchins v. Scott, (1837) 2 M. & W. 809 : 150 E.R. 984 .. 23
Re Ind. Coope and Co., L.R. (1911) 2 Ch. 223 .. 16
Jhaman v. Amrit, (1945) I.L.R. 24 Pat. 325 .. 4
Jyotiprasad v. H. V. Low & Co., (1930) I.L.R. 57 Cal. 1189 .. 18
Kanagammal v. Pandara Nadan, (1926) 52 M.L.J. 176 : I.L.R. 50 Mad. 663 .. 7
Khagendra v. Matangini, (1890) I.L.R. 17 Cal. 814 (P.C.) .. 16
Kissorimohun Roy v. Harsukh Das, (1889) L.R. 17 I.A. 17 : I.L.R. 17 Cal. 180 .. 19
Kota Pothuraju v. Emperor, 1931 M.W.N. (Crl.) 233 .. 20
Krishna Iyer v. State of Madras, (1956) 2 M.L.J. 179, 181 .. 10
Krishna Reddy v. Doraiswami Reddi, (1897) I.L.R. 20 Mad. 19 .. 3
Krushnacharana Padhi v. Gourochandro Dyano Sumanto, (1939) 2 M.L.J. 686 .. 24
Lakshminarasamma v. Satyanarayana, (1943) 2 M.L.J. 151 .. 26
Lakshmi Venkayamma v. Surya Rao Bahadur, (1956) An. W.R. 37 .. 17
Linton v. Linton, (1885) 15 Q.B.D. 239 .. 6
Madali Ademma v. Venkatasubbayya, (1933) 65 M.L.J. 137 : I.L.R. 56 Mad. 692 .. 23
Madathapu Ramayya v. Secretary of State for India, (1903) I.L.R. 27 Mad. 386 .. 12
Mahabir Motor Co. v. Bihar State, (1956) I.L.R. 34 Pat. 429 .. 14
Maharaja Jagadindranath Roy v. Rani Hemanta Kumari Debi, (1904) L.R. 31 I.A. 203 (P.C.) .. 9

	PAGES.
Mancini v. Director of Public Prosecutions, L.R. (1942) A.C. 1, 9	19
Manikam v. Ramaswami, (1944) 2 M.L.J. 403	23
Muthappa Goundan v. State, 55 Cr. L.J. 733 : 1953 M.W.N. (Crl.) 309	20
Mather v. Fraser, (1856) 2 K. & J. 536	25
Murugayi v. Viramakali, (1877) 1 M.L.J. 226	21
Muthuvadivelu v. Regional Transport Officer, A.I.R. 1956 Mad. 143	15
Nabi Shirazi v. Province of Bengal, I.L.R. (1942) 1 Cal. 211, 227, 228	9
Narasingamuthu Chettiar, *In re*, (1948) 2 M.L.J. 221	13
Narayan Sa v. Balaguruswami Nadar, (1923) 45 M.L.J. 385	25
Narayanaswami Gurukkal v. Irulappa, (1902) 12 M.L.J. 355, 358	9
Nasiruddin Midda v. Sidhoo Mia, (1918) 144 I.C. 361	3
Newzealand Shipping Co. v. Societie des Ateliere et chantieres de France, L.R. (1919) A.C. 1 (P.C.)	6
Noor Mohamed and Co. v. State of Madras, (1956) 2 M.L.J. 374, 383	10
Nynakka Routhen v. Vavana Mahomed Routhen, (1869) 5 M.H.C.R. 123	3
Palani Goundan v. Paramasiva Goundan, (1896) 6 M.L.J. 263	3
Pearey Lal v. Naraini, (1935) I.L.R. 58 All. 379	7
Ponnuswami, *In re*, (1950) 2 M.L.J. 200	1
Powell v. Brodhurst, L.R. (1901) 2 Ch. 160	8
Pramatha Nath Mullick v. Pradyumma Kumar Mullick, (1924) 49 M.L.J. 30 : L.R. 52 I.A. 245.	
Prosonno Kumari Debya v. Golab Chand Baboo, (1875) L.R. 2 I.A. 145, 152 (P.C.)	9
Public Prosecutor v. Kondappa, (1947) 1 M.L.J. 317	13
R. v. Hayward, 6 C. & P. 157	18
Radhamoni Debi v. Collector of Khulna, (1906) L.R. 27 I.A. 136 : I.L.R. 27 Cal. 943 (P.C.)	15
Raghbir Singh v. Municipal Board of Hardwar Union, A.I.R. 1956 All. 324	9
Ramaswami v. Chandra Kotayya, (1924) 47 M.L.J. 840 : I.L.R. 48 Mad. 693	8
Ramaswami v. Mathuraswami, (1906) I.L.R. 30 Mad. 12	16
Ramaswami Iyengar v. Sivakasi Municipality, 1936 M.W.N. 221	13
Rangachariar v. The Trinity Bank, Ltd., (1948) 1 M.L.J. 61	22
Rao Karan v. Raja Bahadur, (1882) I.L.R. 5 All. 1 (P.C.)	16
Reg v. Walsh, (1869) 11 Cox 336, 338	19
Rex v. Hopper, L.R. (1915) 2 K.B. 431	19
Rex v. Leabini, L.R. (1914) 3 K.B. 1116 (C.C.A.)	19
Sanga Thevar v. Thanakodi Ammal, (1952) 1 M.L.J. 620	3
Sastry Velaider Aronegary v. Sembecutty Vaigalie, L.R. (1881) 6 A.C. 364 (P.C.)	1
Satyanarayana v. Chinna Venkata Rao, (1925) 50 M.L.J. 674 : I.L.R. 49 Mad. 302	4
Satyanarayanamurthi v. Gangayya, (1939) 1 M.L.J. 692, 694	25
Secretary of State for India v. Debendra Lal Khan, (1933) 66 M.L.J. 134 : L.R. 60 I.A. 78 (P.C.)	15
Sharp v. Wakefield, L.R. (1891) A.C. 173, 183	14
Sheikh Hakim v. Advaita Chandra Das Dalal, (1918) 22 Cal. W.N. 1021	8
Shyam Lal v. Jagannath, A.I.R. 1937 All. 527 : (1937) All. L.J. 395	8
Singaravelu v. Pattammal, (1948) 2 M.L.J. 519 : I.L.R. (1949) Mad. 613	7
Smith, *In re*, (1923) 45 M.L.J. 731 :	12
Srimati Charan Manjari Dasi v. Land Acquisition Collector, A.I.R. 1935 Cal. 119	18
Srinivasan v. Andhra Bank, Ltd., (1948) 2 M.L.J. 569	22
Srinivasayya v. Lakshmayya, (1938) 1 M.L.J. 73 : I.L.R. (1938) Mad. 436 (P.C.)	10
Subramaniam Chettair v. R. D. O., Devakottah, (1956) 2 M.L.J. 126, 131	9
Sukhai v. Emperor, A.I.R. 1925 All. 696.	20
Sundaram v. Mayam, (1921) 40 M.L.J. 497 : I.L.R. 44 Mad. 554 (F.B.)	26
Surendra Nath Nag Chowdhury v. Gopal Chunder Ghosh, (1910) 12 Cal. L.J. 464	3
Thirumalai Naicker v. Ethirajamama, (1946) 1 M.L.J. 438	1
Thomas v. Thomas, 2 K. and J. 79, 83	16
U Po Shein v. Ma Sein Mya, (1930) I.L.R. 8 Rang. 460	7
Veerappa v. Ma Tin, (1925) 68 I.C. 1011 : A.I.R. 1925 Rang. 250	25
Venkatasubbayya v. Venkatarathnamma, (1954) 1 M.L.J. 396 : I.L.R. (1954) Mad. 775	4
Venkataswami v. Kristayya, (1893) 3 M.L.J. 169 : I.L.R. 16 Mad. 341	2, 4
Venkateswara Ethu Naicker v. Ayyamma, (1950) 1 M.L.J. 22	22
Venkayya v. Raghavamma, (1941) 1 M.L.J. 263 : I.L.R. (1942) Mad. 24	7
Vidyapurna v. Vidyanidhi, (1904) I.L.R. 27 Mad. 435, 451	9
Wallace v. Kelsall, (1840) 7 M. & W. 264	8
Williams v. Hathaway, L.R. (1877) 6 Ch. D. 544	5, 6
Williams v. Williams, L.R. (1904) P. 105.	7

THE

MADRAS LAW JOURNAL.

I] JANUARY [1958

"THE NEED FOR JUDICIAL CORRECTIVE IN ADMINISTRATIVE PROCEEDINGS."*

By

SHRI V. G. RAMACHANDRAN, *Advocate, Tirukoilur (S. India).*

Broadly speaking judicial control is assured where amongst other things review can be had only on the following grounds :

(*a*) *Ultra vires.*—to ensure that the determination by the Tribunal was within the authority delegated to the agency ;

(*b*) *Natural Justice.*—that at least minimum standards of fairness which in the United States is called the 'Fundamentals of Play' are observed.

(*c*) *Substantial evidence,*—That the administrative determination has basis in evidence of rational probative force.

We wish to emphasise that Mr. Justice William O. Douglas summarises his views on administrative Tribunals this wise after due weight and considerations being given to the conditions prevailing in America and India[1]. He said,

" The administrative agency has arrived as a new and honourable member of Governmental hierarchy. It has great work to do in the modern world. It is indeed indispensable. Yet it has created new problems and it has had its share of abuses and malpractices. Reforms of its practices have been numerous. Judicial surveillance has been close[2]. Yet in spite of all reforms and all the surveillance, abuses will continue when there is absent a high standard of the public service.... The tendency to rely more on Courts and less on the administrative agency is illustrated to a degree by the Taft-Hartley Act (61 Stat. 136. 29 U.S.C.) and by the Administrative Procedure Act. Thus the Court in *Universal Camera Corp.* v. *Labour Board,* said concerning the changes made by these Acts; 'The Administrative Procedure Act and the Taft-Hartley Act direct that Courts must assume more responsibility for the reasonableness and fairness of Labour Board decisions than some Courts have shown in the past. Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds."

It is petite to quote the Senate Committee's view respecting the Administrative procedure Act[3] "..........for most practical purposes it is to the agencies that the

* Thesis read on 17th December, 1957, at the Administrative Law Seminar of the Indian Law Institute in Delhi.

1. *Vide*: Tagore Law Lectures pp. 135-136.

2. *See* The Fair Labour Standards Act, 52 Stat. 1060, 29 U. S. C., *Addison* v. *Hooley Hill*, 322 U. S. 607. Section 201.

3. S. Rep. No. 752 79th Cong. 1st Sess. 31.

Congress and people must look for fair administration of the laws and compliance with this bill. *Judicial review is of utmost importance* but it can be operative in relatively few cases because of the cost and general hazards of litigation. It is indispensable since its mere existence generally precludes the arbitrary exercise of powers or assumption of powers not granted. Yet in the vast majority of cases, the agency concerned usually speaks the first and last word. For that reason, the agencies must make the first, primary and most far-reaching effort to comply with the terms and the spirit of the Bill."

The need for judicial review can be best appreciated if we take into account the general criticisms levelled by critics against administrative Tribunals. These may be formulated thus :

1. The administrative bodies are repositories of unlimited and uncontrolled power. There are no checks on them as in the ordinary Courts.

2. The discretionary power is likely to be greatly abused, in contradistinction to judicial Courts where there is ample power to protect from such abuse. Discretion is the least controllable thing in an administrative Tribunal.

3. The administrative Tribunal is a miserable upstart when compared to judicial Courts who have a tradition and clarity of procedure. One critic (Rascoe Pound)[1] said that in the former Rules are not accessible, there is no statement of issues, no segregation of fact from law, no clear sequence from issue to evidence, from evidence to fact findings and from fact findings to determination and there is no real review. There is no public record as in judicial Courts, a public hearing, full argument afforded to each side. As Cardozo[2] said on the other hand a judicial Court is informed by tradition, methodized by analogy, disciplined by system and subordinate to the primordial necessity of order in the social life. In the judicial Court there are findings of fact, a judgment which follows logically from the findings and is in accord with accepted legal precepts, review by a Bench of Judges and opinion by an appellate Court.

4. There is often anonymity in the methods and decisions of a Tribunal. This shakes the confidence of the citizen and saps the responsibility of the administrator. In other words there is no assurance of the competence of the person functioning as a Tribunal not of the methods that are likely to be followed in arriving at a decision.

All the above defects can be in a way met if the personnel of the tribunal has had full judicial tribunal, if there is a prescribed definite statutory procedure to be followed and there is a further safety valve in the provision for judicial review or appeal. The official view in England[3] and America[4] is definitely to control these Tribunals by the ordinary tribunal within certain limits.

TYPES OF CONTROL.

Then the types of control on administrative action has to be considered : (1) Legislative control may not be feasible as it generally has neither the time nor the competence to keep effective control over administrative process. This will be the position even if the Legislature was free from any executive domination. As the activities of Government has enormously increased the Administrator's power, the common law states such as India cannot be enthusiastic in setting up administrative Courts either of the French or German Pattern.

(2) The second type of control by superior administrative officer is also no good. It is in a way only 'self control' which is not so easy to achieve.

---

1. *See* his treatise on Administrative Law (1942), pp. 60-62.
2. His work 'The Nature of the Judicial Process' P. 141.
3. *Vide*: The Reports of the Committee on Minister's Power in 1932 and 1955.
4. The Attorney General's Committee on Administrative Procedure P. 209 U.S.A. Appointed by the President in 1939 and it issued a final report in 1941. *Vide* also the Benjamin Report on Administrative Procedure. State of New York 56 Har. L. Rev. 704.

(3) Judicial Control is the only feasible thing as it is impartial, clear cut by tradition and competency. Really administrative action requires supervision from three points of view *i.e.*, public welfare, administrative efficiency and private interests immediately affected by administrative action. Only judicial control can view the matter in this perspective and achieve the maximum result for each of these three objectives.

Law and administration differ in their concept and purpose. Thus Mr. Pound[1] says "Administration achieves public security by preventive action. It selects a heirarchy of officials to each of whom definite work is assigned and governed by ends rather than rules. It is personal. Hence it is often arbitrary and is subject to the abuses incident to personal as contrasted with impersonal or law-regulated action. But well exercised it is extremely efficient, always more efficient than the rival agency can be. Law, on the other hand, operates by redress or punishment rather than by prevention. It formulates general rules of action and visits infractions of these rules with penalties. It does not supervise action. It leaves individuals free to act but imposes pains to those who could not act in accordance with the rules prescribed. It is impersonal and safeguards against ignorance, caprice or corruption of magistrates. But it is not quick enough or automatic enough to meet the requirements of the complex social organisation."

So then while we can be sure of law and Courts of justice to deal with them, there is no such certainty in respect of administrative process and it is therefore we plead for an ultimate judicial corrective being always available in respect of an administrative action or an administrative judgment by a Tribunal.

NATURE OF JUDICIAL CONTROL.

The control by Courts of administrative orders or judgment can arise from various factors, such as

1. Unconstitutionality of the statute under which the Tribunal acts. This will mean judicial review of the very legislation. But judicial control of administrative action will exclude such judicial review of laws passed by the legislature.

2. Relief against illegal administrative action in the preventive or curative form. The former is achieved by direct controls such as the (1) extraordinary legal remedies, by *Habeas Corpus*, *Mandamus*, *Certiorari*, Prohibition, *Quo warranto*, etc.,

(2) equitable remedies such as injunction and declaratory acts;

(3) special statutory appeals to the Courts. The curative relief lies in getting an award of compensation for the injury suffered under an illegal administrative action.

3. In the punitive form the control may be by criminal proceedings to punish an officer for acts which amount to offences.

When we speak of judicial control *vis-a-vis* administrative Tribunals we should naturally refer to category 2 above. The other categories do not arise directly for our study here.

THE NEED FOR A CODE IN INDIA.

If at all in India we must need have administrative Tribunals, the vital question will be to regularise the procedure by a clear code on the lines of the American model. Otherwise standards of trial, hearing, evidence, etc., will vary from Court to Court leading to much confusion and conflict. The elusive phrase of 'principles of natural justice' may not be enough to safeguard the citizen's rights. We will plead for a written code which will provide:

1. Notice in all matters to the aggrieved parties;

2. Absence of bias in the deciding authority;

---

1. Roscoe Pound: Inherent and acquired Difficulties in the Administration of Punitive Justice 1907) Proceedings of the American Political Science Association, Vol. IV, P. 232.

3. Right of party to be represented and aided by counsel ;

4. the decision of the tribunal should set forth the findings and conclusions together with reasons or basis therefor on all material issues of fact, law or discretion presented by the record;

5. Parties should be given the facility to get copies of these decisions and the reasons therefor. An epitome of leading cases also should be published.

6. The administrative officers should be from persons with adequate legal knowledge.

7. If the administrative agency itself does not conduct the initial hearing, the dual function of hearing and decision which have to be discharged by different officials within the administrative agency, may be assimilated to those of original and appellate Courts. If such officers do make the initial decision, in case there is no appeal or review to the agency is provided, such a decision shall be deemed to be the decision of the Agency itself : *vide* section 8 of the American Federal Administrative Procedure Act.

8. A right of appeal to the High Court on questions of law.

9. The fact finding Tribunals who assist the Minister of a concerned department should be manned by persons with adequate legal or judicial training. This alone will aid the determination of facts upon which the discretion has to be exercised. They would also aid in the determination of points of law which may need investigation.

NEED FOR JUDICIAL REVIEW.

How far the existence of special Tribunals was contrary to the Rule of Law theory was answered by Wade and Godfrey Phillips this wise:—(*Vide*: Constitutional Law, by Wade and Godfrey Phillips, Third Edition, page 46).

"It is submitted that the Rule of Law is satisfied provided that the Tribunals are impartial and independent ; that every man is heard before a decision is given affecting his rights ; the reasons are given for decisions and reasonable regard is paid to precedent. It is inconsistent with a Rule of Law that a judicial issue should be decided by a minister interested in carrying out a policy affected by the issue to be decided. Judicial decisions not referred to the ordinary Courts should generally be entrusted to a tribunal with a chairman with legal qualifications and on points of law there should be provisions for an appeal to the Courts, *e.g.*, whether or not an individual comes within the definition of an injured person. The essential requirements are, however, that decisions should be impartial and that those who give them should not be liable to pressure from the executive."

Lord Green, M.R. in his Haldane Memorial Lecture on "Law and progress" posited that in all cases before a special Tribunal "there should be a right of appeal to the Court on questions of law. In no circumstances should the power of Court to restrain a special Tribunal from exceeding its jurisdiction be taken away."

Harold, J., Laski put it "Where executive itself exercise quasi-judicial functions the judiciary should have such power of scrutiny as will enable it to see that the rules adopted by the executive are such as are likely to result in injustice. Executive discretion is an impossible rule unless it is conceived in terms of judicial standard". In *Dyson* v. *Attorney General*[1], Farwell, L.J., observed that the Courts are the only defence of the liberty of the subject against departmental aggression.

The significance and importance for judicial review arises thus. Judicial review ensures smooth and integrated working of the three partners of the State, the Executive, the Legislature and the Judiciary. This is very essential to any democratic form of Government which cannot thrive except on a well conceived balancing and separation of powers. America has succeeded in her constitutional develop-

1. L.R. (1911) 1 K.B. 410.

ment on account of the recognition of judicial review. England has also kept a continuous constitutional growth on account of the importance given to Judicia Review. The growth of mere executive power is not really a danger if it is canalized within banks of Judicial Review which alone can keep it from over-flowing. The success of Judicial Review rests on a well drafted Constitution which gives it a duly honoured place and also on the calibre of the Judges themselves.

It is worthwhile to quote the observation of Jackson, J., in an American case *Youngstown Sheet and Tube Company* v. *Charles Sawyer*[1]. What applies to the Constitution of America is equally applicable to the Indian Constitution which is similar to the former in many respects :

"The essence of the free Government is leave to live by no man's leave underneath the law........to be governed by those impersonal forces which we will call law. Therefore our Government is fashioned to fulfill this concept so far as humanly possible. The executive except for recommendation and veto has no legislative powers......with all its defects, delays and inconveniences men have discovered no technique for long preserving free Government except that *the executive be under the law and that the law be made by parliamentary deliberation. Such instruction may be destined to pass away but it is the duty of the Court to be last,* not first *to give them up.*

These are indeed golden words, clearly demarcating the spheres of the Executive, the Legislative and the Courts.

PRINCIPLE OF JUDICIAL REVIEW TO BE SAFEGUARDED BY COURTS.

The need for a clear provision for judicial review had been repeatedly stressed by eminent Judges in India and England. Patanjali Sastri, C.J., (vide: *State of Madras* v. *V. G. Row*[2], clearly and forcibly posited that " it is the sacred duty of Courts to apply properly and fearlessly the principles of Judicial Review to safeguard the rights of the parties arraigned in a cause. He said "Our Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed powers of reviewing Legislative Acts under cover of the widely interpreted due process clause of the Vth and XIVth Amendments. If then the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon by the Constitution. This is especially true as regard the fundamental rights as to which this Court has been assigned the role of the sentinel on the quivive. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an inpugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set-up are out to seek clashes with legislatures in the country."

It is petite to quote Harold, J., Laski :[3]

"Where the executive itself exercise quasi-judicial functions the judiciary should have such power of scrutiny as will enable it to see that the rules adopted by the executive are such as are likely to result in justice. Executive discretion is an impossible rule unless it is conceived in terms of judicial standard."

In *Dyson* v. *Attorney General*[4], Farwell, L.J., pithily asserted:

"If ministerial responsibility were more than the shadow of a name, the matter would be less important; but as it is, the Courts are the only defence of the liberty of the subject against departmental aggression.'

Justice Raghava Rao of the Madras High Court aptly said[5] :

1. 343 U.S. 579.
2. (1952) 2 M.L.J. 135 : 1952 S.C.J. 253.
3. *Vide* Grammar of Politics IVth Edition, P. 30.
4. L.R. (1911) 1 K.B. 410 at 424.
5. *Vide* Inaugural Address : Diamond Jublee of the Palghat Bar Association, (1950) 1 M.L.J. (Journal) 49.

"Situations of conflict arise between the liberty of the individual and the authority of the State which it falls to the lot of Judges as guardians of the one as well as the other to help resolve by checking the excesses in individual conduct as well as in Governmental functioning with due emphasis on the responsibility as well as the rights of the State and the citizens alike in their relation towards each other...... The poise between the scales of the balance in situations of conflicting forces swayed by conflicting ideologies is by no means easy to achieve. It is in the achievement of such poise, however, that the peculiar privilege and great glory of lawyers and Judges lies with the bent of mind which their tradition and training gives them of a happy mean between the instincts of conservatism and progressivism and which qualifies them to keep the balance wheel of the Constitution going in the manner most conducive to the largest good of the State and the citizen."

As we stated elsewhere under the present Constitution of India, judicial control of administrative agencies is derived by the operation of Articles 136, 139, 32, 226 and 227. The plan of the Indian Constitution strikes a balance between social security and individual liberty. Special care is also taken to see that this individual liberty does not degenerate into license. The India Union is a Federation with a strong centre. The design of the executive set up is to make the cabinet at the Central and State level backed up by its political majority to forge ahead all schemes to further the progress of the welfare State. The parliamentary type of executive under the present practice of party system (now a dominant and only one political party well knit and organised) does indeed make the legislature a creature of the executive. When such is the case the need for judicial control is doubly needed. The Constitution further itself appears to make feasible the creation of important administrative agencies. Articles 301 to 307 which envisage an inter-State commerce authority can in a few years herald a mighty administrative agency. The Tribunal envisaged under Article 263 (1) in respect of Inter-State Water Supply and Distribution, may soon acquire great administrative importance. Though Article 262 (2) excludes control by Courts in such disputes, in course of time when power projects and irrigation schemes inter-State acquire special importance leading to controversies, Parliament may be driven to the necessity of directing the appointment of a High Court or Supreme Court Judge on the Tribunal. May be, it may also keep the door for at least a limited Judicial Review.

Legislative Exclusion of Judicial Control.

Administrative finality which would brook of no judicial corrective is indeed very hazardous to the growth of a civilized Welfare State. As we had already pointed out in England, as the Parliament is Supreme and is itself a Court also, its statutes empowering administrative finality cannot at all be questioned. But even there Courts scan the statute very minutely and if the power given is not in clear terms, they do not hesitate to interfere under their Review powers.

In America it is different for administrative finality is a constitutional impossibility since there is a charter of fundamental rights. The Attorney-General of America rightly posited[1]: "Where even legislative action is subject to judicial veto, there has been little question as to the propriety of judicial review of Administrative Action." The principle of Judicial Review has found its acceptance in section 10 (*a*) and (*c*) of the Federal Administrative Procedure Act, 1946.

In India the Constitution of 1950 has placed the position as similar to that obtaining in America. There may be some difference in the scope of the Judicial Review. We may state that a guarantee of Fundamental Rights in Part III of the Indian Constitution is irreconcilable with the concept of any administratives finality. For the limitations of the Fundamental Rights are clearly made justiciable. The application of Articles 32, 226, 227, 136 and 139 is only to ensure a judicial corrective through writs and appeals. It may be stated that Article 226 applies to questions of '*ultra vires*' which term can include also 'violation of natural justice.' Even where there is legislative exclusion of Court review, the High Court can inter-

1. *Vide* Attorney General's Committee on Administrative, Procedure, p. 75.

vene under Article 226 for manifest defect of jurisdiction and for manifest fraud. Obviously Articles 226 and 227 being above the control of ordinary legislation, the superintending power of the High Court stands fully protected from legislative exclusion. Under Article 226 the High Court has power to prevent excess absence and abuse of jurisdiction and patent errors of law of tribunals. The Judicial Court has the power to satisfy that the preliminary conditions necessary for the validity of administrative action, has been fulfilled.

It may be noted that the attitude of Courts in interpreting the statutory provisions conferring administrative finality fluctuates on three aspects :

(1) On the subject-matter of legislation.

(2) On the nature of the individual right affected by the administrative action;

(3) the quality of administrative justice dispensed under the statute.

Thus in matters affecting revenues of the State the Judges appear to be liberal with the exclusion clause. If it is one affecting proprietary interests the leaning is towards the person affected. But if it is a case of personal liberty then the Court is very strict in interpreting clauses that exclude Court review. If the administrative tribunals are incompetent a very narrow interpretation of the exclusion clause is sought to be made. The question generally poses, is there no fixed rule of statutory interpretation ? We have to console ourselves that of the three organs of the State, the Legislature, the Executive and the Judiciary, the last named is the least liable to abuse any extension of its powers. So Courts should be always on the quivive to correct manifest errors of law and any miscarriage of natural justice. It must be clearly understood that the scope of a judicial control can be limited only by the requirements of justice.

THE EXECUTIVE IN INDIA.

While adverting on the subject of administrative Tribunals, one has to stress one general aspect of a well founded criticism, that whatever justification there may be for these Tribunals to meet special situation the executive had always more confidence in these Tribunals than in the High Courts as the latter were inclined to be too aloft judicially and consequently more critical of administrative lapses. While the executive are overzealous in ushering in more of the pattern of administrative Tribunals, the citizen was naturally doubtful whether his interests were safeguarded in any conflict with the State as such. In such a contest one wishes the Indian Constitution had a clear provision which at least assured the citizen that the executive can act only under the law and that if there was any executive action without legal authority it is not binding. This will be in keeping with the spirit of what Jackson, J., said in the above quoted American case—*Youngstown Sheet and Tube Company* v. *Charles Sawyer*[1].

Articles 53 and 154 of the Indian Constitution vest the executive power of the Union and of the States in the President and in the Governor respectively to act in accordance with the Constitution directly or through subordinate officials. In the original draft Constitution the words used were 'in accordance with the Constitution and the law'. The rule of Law would in the latter event be paramount and the executive could not then invoke any inherent power apart from the law. The American theory claiming inherent power to the President had a disclaimer in the later case above quoted where Jackson, J., clearly posited that the executive should always act under the law and not apart from it. While the position is such in America and England it is a pity that in Article 53 of the Indian Constitution the words "under the Law" has been omitted. If the Government is anxious to remove public apthy, it is urgent that an amendment of Articles 53 and 154 in the above direction is necessary. If the Government do not do this and go ahead with the formation of administrative Tribunals on the French pattern public confidence may be rudely shaken.

1. 343 U.S. 579.

There is however one provision, Article 256 of the Indian Constitution which posits : The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose." This is indeed good so far as it goes that the executive shall see that the Law of the land is obeyed and the rule of Law as respected. But there is nothing in our Constitution to prevent the executive claiming inherent powers apart from the law and which do not offend any law in force. That is not a very enviable position. If administrative Tribunals are introduced and the citizen is compelled to seek that forum only for any action against the State the need for making the executive act only under the law and not apart from it will be more immediately felt.

COMMON LAW STATES AND PREROGATIVE STATES.

States may be divided into two types as C.F. Strong puts it :

(1) Common Law States in which the executive being subject to the operation of the Rule of Law is unprotected. (2) Prerogative States in which the executive is protected by a special system of Administrative Law. Britain is a unitary State with a flexible constitution, a legislature elected on adult suffrage, with single member constituencies, a non-elective second chamber and a parliamentary executive subject to the Rule of Law. America is a Federal State with a rigid constitution a legislature elected on adult suffrage with single member constituencies and an elected second chamber and a non-Parliamentary executive subject, to the Rule of Law. India follows a middle pattern. It is quite federal, with a rigid written constitution, a legislature elected on adult suffrages, with single member constituencies with a second chamber elected by the popular legislature with a Parliamentary executive subject to the Rule of Law.

So our concept of a Federal States following the American pattern to a great extent, cannot but be subject to the Rule of Law. We are not a prerogative State functioning under Administrative Law where the executive are unduly protected. France is undoubtedly a prerogative State where such Administrative Law has been perfected. It is not proper that India should copy the French pattern as it will not suit a Federal Democracy. But India may consider some good aspects of Administrative Law within a limited sphere, always giving a wide margin for Judicial Review of all orders of Administrative Tribunals on points of law at least. We may yet value Dicey's dictum " That no man is above the Law and that every man, whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary Tribunals."

NEW JUDGE OF THE MADRAS HIGH COURT.

The appointment of Sri S. Ramachandra Ayyar, a senior and respected member of the Madras Bar and an Advocate of the Supreme Court of India, has been received with uniform approval by one and all. Apart from the news floating in the air during the past few weeks, the elevation of Sri Ramachandra Ayyar to the Bench was talked of as a matter of course for the past some years. He has been a leading practitioner on the Appellate Side of our High Court for over a decade and a half and has appeared in several cases involving intricate questions of law. Enrolled in 1927, he has worked as a junior under Sri K. S. Krishnaswami Iyengar, an able lawyer with extensive practice, who became the Government Pleader of Madras and then a Judge of the High Court later.

Born in 1904 in Kumbakonam Taluq of Tanjore District, Sri Ramachandra Ayyar had his early education in several of the southern districts of the State where his father Sri S. P. Subramania Ayyar served as a member of the State Judicial Service till he retired as a Subordinate Judge. He had his University education in the Pachayappa's College and the Law College at Madras. Tall and thin, with sharp eyes and intellect, a catholic outlook and reserved character, he is of quite a social and clubbable type but never forces himself on any company or group. Belonging to an orthodox family and brought up in the traditional ways he is learned in the Vedas and is of a pious and charitable disposition. He has no diversions as commonly understood in modern society. He has been serving the 'jealous mistress'—the Law—'scorning delight and living laborious days'. With no great adventitious circumstances he has built up a steady and lucrative practice in the course of years by intrinsic worth and hard work and has earned a high reputation for his able advocacy and great integrity. His elevation to the Bench of the High Court is but a due recognition of well deserved merit.

He will be serving a full term as a Judge and we are sure that he will add to the high traditions and reputation which the Madras High Court has earned for its learning and efficiency under the guidance of eminent Chief Justices and other Judges. Coming as he does, with a rich experience at the Bar, he will be an able and popular Judge.

We join the large number of his friends, admirers and colleagues in offering our felicitations to the learned Judge and convey our sincere prayer and good wishes to his Lordship for a happy and successful tenure of office in his new assignment.

DEPT. OF LAW NOT TO BE REMOVED UNIVERSITY OF CALCUTTA

A LAW SUIT THAT WAS ADJOURNED FOR A HUNDRED YEARS !

By

SRI S. VARADARAJULU NAIDU.

District and Sessions Judge of Ramanathapuram at Madurai.

It is a matter of history that the ancient Athenians, fortunately blessed with secular justice, had justice dispensed with usually at the market place at the meetings of the popular assembly called " Ecclesia ". " Ecclesias ", when conducting trials, were like Juror-Courts of the present day, with this differrence, that the Athenian Jurors were Judges not merely of fact, but also of law. Sometimes the Athenians held their Courts, instead of at the Agora on the market place, on the Areopagus Hill, and the Pnyx Hill. The Tribunal of the Areopagus had as its motto, the words of the Goddess Athena, " This Court, majestic, incorruptible, the sleepless watcher of my land I set."

Before such a Tribunal with such a motto, a law suit had to be adjourned for a hundred years; when the Juror-Judges were puzzled, and were unable to decide the issue. Protagoras, the teacher of Forensic Oratory, made a contract with his pupil Evalthus that his fee should be payable when the young man won his first law suit. After a while the lessons ceased, and the teacher pronounced the pupil competent; but the pupil insisted that he was not. The teacher cut the Gordian-knot and sued the pupil for his fee. The teacher pleaded thus : " I win either way ; for if the judgment is for me, he must pay ; but if it is for him, he has won his first suit and under the contract he must therefore pay." His pupil pleaded in reply. " I win either way ; for if the judgment is for me, I am not liable and if the judgment is against me, I have not yet won my first suit ". It is these conundrums—rare gems of skill in argument—that puzzled the Juror-Judges of the Areopagus, with the result that they sought refuge out of the dilemma by adjourning the suit for a hundred years !

Of course, the History of the Athenians has not chronicled that the suit was heard again, between the later successors-in-interest of the teacher and of the pupil !

Letter to The Editor.

ENROLMENT OF PLEADERS AS ADVOCATES.

Sir,

The enrolment of the Pleaders as such ceased in 1931, and afterwards compulsory enrolment of Advocates began to be enforced. The Government is now pleased to amend the Stamp Act and reduce the fee for enrolment as Advocate to Rs. 50. The pleaders who desire to enrol themselves will be not less than 50 years of age. They have already parted with a heavy sum by way of getting sanads and renewal every year during all these years. In the above circumstances it will be desirable that pleaders who now seek to enrol themselves as advocates may be spared the fees to the Bar Council for enrolment and they may also be permitted to enrol themselves before the respective District Judges so that there need not be any costly journey expenses to enrol themselves before the High Court at Madras. I hope that the authorities concerned will facilitate the entire pleaders in the Presidency to enrol themselves as Advocates with a minimum expense.

N. Srinivasa Iyer.
Advocate, Madurai.

Department of Law Library
Acc. No. 726323
Date..............
C. U.

DOES ARTICLE 226 OF THE CONSTITUTION NEED ANY AMENDMENT?*

By

S. M. SIKRI, *Advocate-General, Punjab.*

I will first explain why I selected this limited topic. First judicial review of administrative action under Article 226 of the Constitution is becoming suspect without realising its transcendent and fundamental importance in our Constitution and without a detailed investigation of how it has worked in practice since 1950, when the Constitution came into force. Secondly, my experience—I have since 1951 appeared for my State and the Union of India in hundreds of cases involving judicial review of administrative action—does not justify this suspicion. I feel that careful investigation and research should be undertaken before it is decided to perform a major surgical operation on Article 226 of the Constitution. There is no doubt that there are some defects, but these, I feel, can be remedied by a minor operation.

For the purpose of this paper, I will take administrative action to mean any action of the administration, including Tribunals, whether it is legislative, judicial or quasi-judicial or executive. This is in accordance with the definition of administrative law given by Wade[1] as "the whole body of law which determines the organisation, power and duties of administrative authorities". This definition is accepted by Friedmann in "Principles of Australian Administrative Law," p. 28.

The scope of judicial review has been authoritatively settled by the Supreme Court in a series of judgments: *Veerappa Pillai* v. *Raman & Raman Ltd.*,[2]: *Ebrahim Aboobakar* v. *Custodian General of Evacuee Property*[3], *Basappa* v. *Nagappa*[4], *Hari Vishnu* v. *Ahmed Ishaque*[5], *Bengal Immunity Co.* v. *State of Bihar.*[6] *Thangal Kunju Musaliar* v. *Venkatachalam Potti.*[7] Apart from the question when there is an error of law apparent on the record, the law is clear. It is to the actual exercise of the powers by the High Court that I address myself to find out whether the public interest or the interest of the State is being adversely affected by the exercise of these powers and whether any other body or tribunal constituted in a different manner can accomplish what has been achieved by the High Courts both directly and indirectly.

I will first deal with the supreme importance of Article 226 in the Constitution. The humble citizens approach the High Courts under Article 226 in the same manner and with the same expectation and deference as they did the Rajas of old who could not only be appealed to in person but who could remove any injustice. It is impossible to imagine that any tribunal differently constituted will ever command this appeal and deference. Justice must not only be done and seem to be done, but there must be an instinctive feeling that it is sublime justice, and this feeling can never be nurtured in the citizens when the person administering justice has not that halo around him, which centuries of tradition have placed on our Judges. The shadow of our past famous Judges and famous English Judges not only impels each Judge to administer justice without fear, but gives an invaluable sense of confidence and freedom to the people. What Lord Denning, says,[8] 'If there is one thing above all others, of which the Englishman can be sure, it is that the Judges are independent of the executive', applies equally to India.

---

* Thesis read at the Administrative Law Seminar, Delhi, on 14th December, 1957.

1. Appendix I to Dicey, pages 475 to 484.
2. 1952 S.C.R. 583 : (1952) S.C.J. 261 : (1952) 1 M.L.J. 806.
3. 1952 S.C.R. 696 : (1952) S.C.J. 483.
4. (1955) 1 S.C.R. 250 : 1954 S.C.J 695.
5. (1955) 1 S.C.R. 1104 : (1955) S.C.J. 267 : (1955) 1 M.L.J. (S.C.) 157.
6. (1955) 2 S.C.R. 603 : (1955) S.C.J. 672: (1955) 2 M.L.J. (S.C.) 168.
7. (1955) 2 S.C.R. 196 . (1956) S.C.J. 223.
8. "Freedom under the Law", p. 82.

Articles 226 and 32 may indeed be termed the two symbols of this great democratic Republic which the Indian people have created. Destroy these two and you will destroy the precious confidence of a free people who I can hear saying "we cannot be oppressed under our Constitution. Our Judges, on whom we have conferred the judicial content of our sovereignty will see to it that every action of the executive is warranted by the Constitution and the laws made under it."

Nothing in our history has channelled administrative action into lawful channels more than Article 226. Each executive officer not only knows of its existence, but knows its long reach and its efficacy. If he has any doubt about the legality of anything he is going to do, he will invariably consult the Law Department.

The Law Secretaries will tell you about the consequent tremendous increase of opinion work. Let it be said to the credit of the administration that legal advice is invariably followed. Remove Article 226 and you will see a gradual deterioration in the legal standards of administration. The threat of a suit or an appeal to a higher administrative authority has no such preventive effect. It may be that the executive officer knows he will not be occupying the same office when the suit or appeal is decided years afterwards. It may be that the High Court, with all its dignity and plenary powers, ever ready to inquire into his acts if a *prima facie* case is made out, overawes him. But whatever the reason, Article 226 does affect him. It tells him " Be careful. Act according to Law. There is no place for arbitrary and illegal action under our Constitution". A suit or an appeal simply does not give this message to him.

The High Courts in India have disposed of thousands of cases under Article 226 of the Constitution since 1950. This is a rich field for a research scholar to delve into. I have, for the purpose of this paper, as a sample, looked into all the cases filed in the High Court in 1955 and decided against the Government. I have examined them in detail in the Appendix to this paper. I considered these cases to see if there is any justification for the Administration to fear review of its action by the High Courts. It is this fear which led to the creation of Administrative Courts in France. As Lord Denning says[1] "The State there seems to have suspected the ordinary Courts of a spirit of hostility towards it so that it could not obtain justice in them, with the result that it had gone much further than we have in taking away work from the ordinary Courts". I find that the State does get justice in the High Courts. It will be seen from a perusal of the Appendix that the High Court has interfered justly. An Administrative Court worth its name would, in most cases, have interfered too. The only difference, I imagine, between the decisions of an Administrative Court and a High Court would be the desire of the latter and the absence of this in the former, to see that the end even though justified is achieved by just means, *i.e.*, by a procedure which the Law sanctions. But is not this what Mahatma Gandhi taught us? Just means in the legal sphere can only connote procedure sanctioned by the Law and the Constitution. Even regarding this, the High Court does not interfere unless the adoption of the illegal procedure has caused manifest injustice to the petitioner.

However, in one matter, I feel that the Administration is justified in expressing alarm, and that is the effect in some cases of stay orders which are issued after petitions are admitted to a hearing by the High Court.

Once a petition raising a question affecting a large number of persons is admitted in the High Court, invariably a large number of petitions follow and if the question concerns a revenue collecting department like the Income-tax Department or the Sales Tax Department or a department carrying on some beneficial activity like the Department of Consolidation of Holdings or administering an Act like the Employees' Provident Funds Act, the effects are disastrous on the administration of the department, if the High Court issues interim stay orders. The department has in some cases literally to sit idle till the question is decided by the High Court and per-

1. "Freedom under the Law", p. 78.

haps by the Supreme Court. This takes time. Sometime if the question raised involves determination of the fundamental rights a petition is filed in the Supreme Court which issues a stay order. After this a large number of petitions follow in the High Court on the same pattern and the High Court also issues stay orders. The Government naturally gets impatient. It is keen to get on with the administration and the carrying on of beneficial activities, but feels helpless. In some cases it and its legal advisers know that there is no likelihood of the point prevailing in the High Court or the Supreme Court. In other cases, where the point is fairly arguable and the question is only one of the interpretation of an Act or Rules made under it, the Government knows that it will bring in amending or curative legislation to get over the difficulty if the decision of the High Court is against it, and the Government feels that the administration is being held up unnecessarily. Even if the question is one of fundamental rights, Government feels it will be able to achieve the object of the legislation by other means. Reference is invited to case No. 9 in the Appendix. What is the best method of getting over the difficulty? Surely not an amendment of Article 226 or Article 32, taking away the jurisdiction of the High Court or the Supreme Court completely. Would an amendment of Article 226 somewhat on one of the following lines solve the difficulty.

" (a) Provided that the High Court shall revoke or vacate a stay order if the Advocate-General certifies that the stay order will in the opinion of the Minister concerned adversely affect the public interest and concerns the revenue of the State or Union of India or concerns such department as may be prescribed by Parliament or the Legislature of a State by law."

The High Court would, where a stay order has been vacated under this provision, give top priority to the disposal of the case or cases.

A similar amendment of Article 32 would also be necessary.

I must confess I have not been able to find an exact precedent for this suggestion. In the United States there is a limited provision for preventing the Courts from interfering with the levy and collection of taxes. In 319 U.S. 293 reference is made to an Act of August 21, 1937. 50 Stat. 73 C. 726 enacted as an amendment to section 24 of the Judicial Code. 28 U.S. C.A.S. 41 (1) : 8 F.C.A. like 28 S. 41 (1). This provides that "no district Court shall have jurisdiction of any suit to enjoin, suspend or restrain the assessment, levy or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, efficient remedy may be had at law or in equity in the Courts of such State." I have not been able to trace a similar provision, which I believe exists, dealing with taxes collected by the United States Government.

On the other hand the American Administrative Procedure Act 60 Stat. 237 (1946) by section 10 (*e*) enables both an agency and the reviewing Court "to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings." In cases except where statutes preclude judicial review or agency action is by law committed to agency discretion (Gellhorn & Byse, page 301).

Section 67 of the Indian Income-tax Act provides that "no suit shall be brought in any civil Court to set aside or modify any assessment made under this Act." The Privy Council gave it a wide interpretation in *Raleigh Investment Co., Ltd.* v. *Governor-General in Council*[1]. The Supreme Court, however, limited the scope of a similar provision in the Bengal Agricultural Income-tax Act, 1944.—*The State of Tripura* and the *Province of East Bengal*[2]. It held that as no assessment had been made, a suit for a declaration that the Bengal Act was *ultra vires* and void was competent.

In India innumerable Central and State Acts have sections barring suits.

Section 226 (1) of the Government of India Act was in the following terms :

" Until otherwise provided by the Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue or

1. (1947) L.R. 74 I.A. 50 : (1947) 2 M.L.J. 16: 15 I.T.R. 332 (P.C.).
2. (1951) S.C.J. 70: (1951) S.C.R. 1.

concerning any act ordered or done thereof according to the usage and practice of the country or the land for the time being."

But in *Alcock Ashdown & Co.* v. *Chief Revenue Authority of Bombay*[1], the Privy Council sanctioned the issue of a *mandamus* to compel the authorities to carry out the procedure prescribed by the Income-tax Act.

The question is really one of Public Interest. Is Public Interest served by a law which enables the High Courts to issue stay orders and enjoin the collection of Revenue? If the law does not, it should be changed. In a Welfare State, spending large sums of money not only is it imperative that taxes should be collected speedily but that its beneficial activities should be carried on unhampered though within the law.

I may make it clear that I do not suggest that no administrative tribunals or agencies should be created. Let the State create as many tribunals and agencies as it likes, but let the agencies and tribunals be subject to the supervisory jurisdiction of the High Court and ultimately of the Supreme Court.

I will now mention one defect in our system which I have noticed while dealing with cases under Article 226. In one respect the High Courts do not afford justice to the citizen, and it is essential to devise a machinery that will rectify this injustice. The High Courts in India have not yet adopted the "substantial evidence" rule evolved by the Courts in the United States. (*See* Gellhorn & Byse, page 426 *et seq.*). They do not go into disputed questions of fact. Although the Punjab High Court has framed rules which enable it to permit evidence to be led, I cannot remember one instance in which this power has been exercised. The result is that hopeless findings of facts are allowed to say and determine rights. There is one way of solving the difficulty, and this is that the agency should follow a prescribed procedure and be required to keep a record. But there is one aspect which must be borne in mind, and is forcibly put by President Roosevelt in his veto message on the Walter-Lagon Bill[2]:

"It is impossible to subject the daily routine of fact findings, in many of our agencies to Court procedure. Litigation has become costly beyond the ability of the avarage person to bear. Its technical rules of procedure are often traps for the unwary and technical rules of evidence often prevent common-sense determinations on information which would be regarded as adequate for any business decision...... It is characteristic of these tribunals that simple and non-technical hearings take the place of Court trials and informal proceedings supersede rigid and formal pleadings and processes. A common-sense resort to usual and practical sources of information takes the place of an archaic and technical application of rules of evidence and an informed and expert tribunal renders its decisions with an eye that looks forward to results rather than backward to precedent and to the leading case." He admitted that with the objective—the assurance of fairness in administrative proceedings—there will be universal agreement. 'The promotion of expeditious, orderly and sensible procedure in the conduct of public affairs is a purpose which commends itself not only to the Congress and the Courts but to the executive departments and administrative agencies themselves.'

Some of our Acts do prescribe a procedure which ensures that findings of fact are arrived at in a proper manner, but others prescribe no procedure. In such cases one cannot be assured of the soundness of findings. I have known of a District Magistrate concluding that a house is vacant on the report of an inspector, who had only asked some by-standers—names not in the report—near the house, and a report not seen by the owner of the house. The fate of most cases is decided when the facts are found. An executive officer might well say: "Let me decide the facts and I do not care who decides the principles."

---

1. (1923) L.R. 50 I.A. 227: I.L.R. 47 Bom. 742 (P.C.).
2. *Davis*: Cases on Administrative Law, p. 48.

The experience of our American friends can be of great assistance to us in this matter. I only pose the problem which is shown to exist in India from my experience of judicial review under Article 226.

To conclude, my plea is this. Our Constitution-makers have fashioned great instruments of justice in Articles 226 and 32 of the Constitution. Let us pass these on—great symbols and a great heritage—to posterity.

APPENDIX.

I will take one by one the cases decided against the State.

(1) C.W. No. 219 of 1955.—*Ram Dass Passi* v. *State of Punjab*, dated 27th December, 1955.

The interpretation of section 3 (1) of the Punjab Municipal Executive Officers Act, which provided that the Committee shall appoint an Executive Officer a person "with the approval of the State Government for a renewable period of 5 years." The Punjab Government approved the appointment of the Executive Officer but reduced the period of appointment to less than 5 years. The High Court held that it could not. The facts were admitted and the only question was as to the precise powers of the Government under the Act.

(2) C.W. No. 188 of 1955.—*Chanchal Singh, etc.* v. *State of Punjab*, dated 25th March, 1957.

The petitioners were in possession of certain lands situated in village Sarja Mirza on the eastern side of upper Bari Doab Canal near Ferozepore. The district authorities requiring the land for the Punjab Additional Police and thinking that the petitioners had no right to the lands attempted to eject them. The High Court held naturally that the petitioner could not be ejected in this manner. The petition was not disposed of till 1957 because the District Authorities took over a year to file an affidavit in reply. The High Court had issued an interim stay order, and therefore the delay did not prejudicially affect the petitioners but without an immediate stay they would have had to file a suit after being ejected and the litigation would probably be still going on.

(3) C.W. No. 386 of 1955.—*Shiv Karan Singh* v. *Competent Officer, Hissar*, dated 20th September, 1956.

A sale of land had been effected under section 10 (*b*) of the Evacuee Interest (Separation) Act, 1951, which enables the Competent Officer to sell a property.

The petitioner had purchased the land and the Competent Officer had in accordance with Rules framed under the Act confirmed the sale and issued the sale certificate. Later, on the application of an interested party, filed after great delay, the sale had been set aside. The High Court upheld the contention of the petitioner that the sale could not be set aside. No rule provided for this to be done. No suit was competent under the Act (section 18) and the petitioner had no other remedy except under Article 226 of the Constitution. The facts were not much in dispute and the case could be decided on the interpretation of the Act and the Rules.

(4) C.W. No. 45 of 1955.—*Lumsden Club* v. *Punjab State*, dated 29th June, 1955. (1956 P.L.R. 426).

The petitioner was a club in Amritsar and a notification had been issued by the Government which prevented the sale of foreign liquor in the clubs. This notification was however made applicable only to Civilian Clubs. Both the Punjab Excise Act under which the notification was issued, and the notification were challenged as violating Article 14 of the Constitution. Holding that the expression 'Civilian Club' was vague and for certain other reasons the High Court declared the notification to be void under Article 14. The petition was decided within a few months. A suit could not possibly have given relief to the club within 6 months.

(5) C.W. No. 278 of 1955.—*Sohan Lal* v. *Punjab State*, dated 12th January, 1956.

Under the Requisitioning and Acquisition of Immovable Property Act before requisitioning any property the competent authority has to issue a notice to the owner to show cause why the property should not be requisitioned. The competent authority had issued a notice but it was served not in the manner prescribed in section 15 of the Act. A servant not authorised to receive it had taken it and not communicated it to the owner. The High Court holding that the notice had not been served properly quashed the order of requisition. The case was decided within a few months and the rights of the petitioner upheld without much expense to him. Would an Administrative Court have given effect to this contention or would it have treated this as mere technicality? And which view subserves justice better?

(6) C.W. No. 370 of 1955.—*Girdhari Dass* v. *D. C. Ferozepore*, dated 2nd May, 1956.

Under the Punjab Village Common Lands (Regulation) Act, 1953, the Deputy Commissioner had passed an order vesting certain lands treating them to be Shamilat deh in the Panchayat. He had held no inquiry but on the basis of the revenue records and the report of the Patwari, he had held the land to be Shamilat deh and so covered by the Act. If the land was Shamilat deh his order was proper, if not, the petitioner was being deprived of his property without any justification. The petitioner filed in the High Court with his affidavit documents which showed, at least *prima facie*, that the order was incorrect. The affidavit in reply on behalf of the State did not meet the inference arising from the documents. The High Court quashed the order leaving it to the Deputy Commissioner to hold further enquiry if necessary. Should the High Court interfere in such cases or leave it to the petitioner to bring a suit or appeal to the higher Revenue Authorities? If the Judge is convinced that the order is erroneous should he hold his hand and direct the petitioner to try his other remedies? This question keeps cropping up, and no satisfactory principle has been evolved.

(7) C.W. No. 23 of 1955.—*Ranveer Singh* v. *State*, dated 23th November, 1956.

This case shows the extraordinary lapses which some executive officers are capable of. An enquiry officer while conducting an enquiry on charges, which ultimately led to the dismissal of the petitioner, a Government servant, adopted a most extraordinary procedure. Instead of recording evidence and giving an opportunity to the petitioner of cross-examining the witnesses produced against him the inquiry took the shape of an informal discussion among the 2 witnesses, the petitioner and the enquiry officer. No notes were even kept of this discussion. The proceedings consisted solely of some questions and answered by the petitioner. The justification offered for this procedure was that the main evidence consisted of accounts and documents and the enquiry officer was quite competent to look into them and decide and where he felt any doubt he had asked the petitioner to explain. The High Court naturally refused to treat it as reasonable opportunity, but I wonder what an Administrative Court would have to say about it. If the Administrative Court consisted of officers with executive training it would probably treat it as a mere technicality.

(8) C.W. No. 167 of 1955.—*Bhagat Ram Soni* v. *Union of India*.

The case involved an interpretation of a notification issued under the Displaced Persons (Claims) Act, 1950. The notification defined property in respect of which a displaced person could make a claim but the Proviso provided that where a claimant has been allotted any agricultural land in India and that

(*a*) where the agricultural land so allotted exceeds four acres, the value of the building in respect of which the claim is made shall not, according to the present estimated cost of construction, be less than Rs. 20,000.

(*b*) where the agricultural land so allotted does not exceed four acres, the value of the building in respect of which the claim is made shall not, according to the present estimated cost of construction, be less than Rs. 10,000.

Explanation I.—In this rules, the expression "building" includes

(*a*) any structure in the immediate vicinity of a building without which the building cannot be conveniently occupied or enjoyed ;

(*b*) any garden, ground, enclosure and out-houses, appurtenant to such building ."

The single Judge decided in favour of the petitioner holding that the expression 'the building' referred to a number of buildings but he was reversed on appeal. This was eminently a question of interpretation suitable for decision by a High Court.

(9) C.W. No. 385 of 1955.—*Suraj Parkash Kapur* v. *The State.* (1957 P.L.R. 103).

During the allotment of evacuee land in the Punjab various persons had secured very good lands while others with equal rights had received poor lands. The latter complained against this injustice to the Rehabilitation Department, which gave an undertaking that during proceedings under the Holdings (Consolidation and Prevention of Fragmentation Act), this injustice would be removed. In November, 1951, the Government decided to carry out the undertaking. It issued executive instructions in 1952 (these instructions were withdrawn in 1956) to the Consolidation Officers to remove the injustice. These executive instructions were challenged and scores of petitions were filed. Stay orders were obtained and consolidation proceedings, wherever they were taking place, came to a stop. The High Court held that the Executive instructions were contrary to the provisions of the Consolidation of Holdings Act, the Administration of Evacuee Property Act, 1950 and violated Article 31 of the Constitution as they deprived certain displaced persons of property without authority of law. The latter part of the decision was overruled in another case by the Supreme Court (*Amar Singh* v. *Custodian, Evacuee Property, Punjab*[1].) The Government felt that if the Judgment of the High Court was allowed to stand the State would have to spend a sum of about 2 crores in order to do the work of consolidating holdings again and that in the process rural economy would be disrupted. The Punjab Legislature intervened and with the assent of the President passed a Validating Act (VI of 1957). This Act was challenged as being *ultra vires* and the High Court has heard arguments on this question. In the meantime the work of consolidation in villages in which these executive instructions were applied and they are hundred is at a stand-still. The State is determined to legalise whatever has been done and it is only a question of time before this objective is finally achieved. But in the meantime most of consolidation of holding in the affected village is being held up. What is the solution of the difficulty illustrated by this case ? If the amendment which I have suggested had been part of Article 226 there would have been no interference with this activity, which is essential for the success of the grow-more food campaign.

(10) C.W. No. 222 of 1955.—*Uppal* v. *Chief Settlement Commissioner*, dated 27th September, 1956.

The petitioner attacked the order of the Settlement Commissioner dated May 19, 1955, valuing the petitioner's land left in Pakistan, under the Displaced Persons Claims (Supplementary) Act, 1954. One of the Settlement Commissioners had in the presence of the petitioner dictated an order earlier on May 29, 1954, in favour of the petitioner, but had not signed it and the petitioner alleged that this order was final and could not be reopened. Further the Settlement Commissioner in the later order had relied on material contained in proceedings concerning other persons without putting this material to the petitioner. What was the effect of this omission ? The answer to this was assumed to depend on whether the proceeding was quasi-judicial or not. The High Court found that the proceeding was quasi-judicial and the failure to put the material to the petitioner amounted to a denial of hearing. There are interesting cases in U.S.A. on this point (*See* Gellhorn & Byse : Administrative Law, page 940, *et seq.*) Once the American cases on Adminis-

1. (1957) S.C.J. 574 : A.I.R. 1957 S.C. 299.

trative Law become common knowledge among the legal profession our jurisprudence would get richer. But if these cases are studied it becomes clear that the Courts are capable of chalking out a middle line which neither fetters the administrative agencies nor sacrifices fairplay. An administrative Court, I fear, would not attach so much importance to fairplay.

(11) C.W. No. 257 of 1955.—*Arjan Singh* v. *Excise and Taxation Commissioner*.

The Excise and Taxation Commissioner passed an order cancelling the registration certificate of the petitioner issued under the Punjab Sales Tax Act. The petitioner filed a revision to the Financial Commissioner alleging that he had not been given any notice before cancellation. The Financial Commissioner dismissed the revision on the ground that the petitioner had not produced certified copies of previous orders. The petitioner then approached the High Court under Article 226 of the Constitution. The High Court held; "that it is a principle of natural justice that no order to the detriment of a subject should be passed before he has been heard. Cancellation reacts grossly to the disadvantage of the dealer because he cannot carry on his business after the cancellation." Section 7 of the Act which enabled the Excise and Taxation Commissioner to cancel the license did not make any mention of any opportunity being afforded before cancellation.

This type of question keeps arising and the High Court keeps on interfering on this point, but the Executive Officers seem to be disinclined to give opportunity unless the Act specifically so provides. It seems desirable that all Acts or Rules made under the Acts should provide a procedure consonant with the principles of natural justice.

(12) C.W. No. 355 of 1955.—*Sugar Syndicate* v. *Excise and Taxation Commissioner*.

The Sales Tax Department was refusing to refund sales-tax although it admitted that the sales-tax had been levied and collected by it wrongly. The petitioner applied for a writ of *mandamus* to compel the department to refund the money. The petitioner had no other remedy because section 19 of the Act prevented the filing of a suit. Section 12 of the Act, however, enabled the assessing authority to refund taxes. The only defence was that the petitioner had collected the sales-tax from its customers. The High Court held that this was no defence and issued a direction directing refund. It will be seen that apart from Article 226 of the Act the petitioner would have had no other remedy.

(13) C. W. No. 14 of 1955.—*Ram Sarup* v. *State of Punjab*.

A mate coolie attached to the Public Works Department was removed from service on the basis of inquiries made at the spot of the alleged occurrence by various officers including the Superintending Engineer. In these inquiries the petitioner had not taken any part. The High Court holding that no reasonable opportunity had been given quashed the order of removal. This case also illustrates the difference of the Executive Officers to give opportunity to the affected parties.

(14) C. W. No. 14 of 1955.—*Mehar Singh Rikhi* v. *Shri R. K. Vaish*.

The Settlement Commissioner had rejected a Review Application on the ground that no review application lay. The High Court found that a review application did lie, and accordingly directed the respondent to hear the review application and dispose of it according to law. In this case too the petitioner had no other remedy except to approach the High Court under Article 226 of the Constitution.

In the High Court in the year 1955 about 1000 (one thousand) applications under Article 226 were filed. A great number were dismissed at the preliminary hearings and of the rest only the above discussed cases succeeded. Does this record justify any apprehension in the mind of the State that it will not get justice in the High Court ?

CONTROL OF THE LEGISLATIVE POWERS OF ADMINISTRATION*

By

N. C. CHATTERJEE, *Barrister-at-Law, Senior Advocate, Supreme Court of India.*

In the British House of Commons a historic debate took place on the motion of a private Member that " the power of the Crown had increased, is increasing and ought to be diminished ". It is often remarked that a similar motion should be tabled in the House of the People in the Indian Parliament to the effect that the power of the Executive has increased, is increasing and ought to be diminished. Those who have been brought up under the influence of the *laissez-faire* doctrine and under the spell of Professor Dicey's classic exposition of the doctrine of Rule of Law, resent the inroads of New Despotism in the legislative field which is making Parliamentary sovereignty to some extent illusory.

The expansion of Governmental control and regulation and the progressive demands which are made upon a modern State for the uplift of the masses in an under-developed economy would lead to the gradual expansion of delegated legislation. It is almost futile to say that there is no Administrative Law either in England or in India. Administrative Law should no longer be *terra incognita* to the citizen or to the lawyer in India. According to a recent statement made by the Union Minister of Law there are as many as 100 administrative tribunals operating under Central Acts. The profound change in the role of administration has caused a set back to the cause of freedom of the individual as understood in the 19th Century. The recent Companies Act has clothed the Executive with judicial or quasi-judicial powers or functions in a number of important matters.

It has been aptly said that " the very success of *laissez-faire* has led to its undoing." The progress of industrialisation has led to the concentration of population in insanitary and overcrowded cities. The administration is under a duty to intervene in the interest of public safety and health and a Government is likely to be censured if it fails to effectively discharge its obligations. That implies interference with citizens' rights and is often not consistent with freedom of property and personal liberty. Similarly an irresistible urge for fair treatment of exploited labour has led to the encroachment on the right of capital or management to the untrammelled right of employment based on the old concept of freedom of contract.

Administrative Law poses the most difficult problem of modern times, namely, the conflict between Governmental authority and individual freedom and the problem is how to bring about a balance between the two. Those who have faith in the Rule of Law do not want any change in the basic doctrine of the absolute supremacy or predominance of regular law over arbitrary power. Modern constitutional lawyers may comment on Dicey's traditional exposition of the Rule of Law as the homily of a Victorian Whig.

Yet the most fervent champion of Administrative Law should recognise that a democratic State should be based and run on one principle that a man must be punished for a breach of law and he can be punished for nothing else. Equally important is the doctrine of subjection of the executive to the Courts of the country which are impartial and free from official control or pressure. It may be that Dicey misunderstood or it will be an evil day for a State which believes in parliamentary Government, if it fails to emphasize the basic doctrine of equality before the law which means that Fundamental Rights must be protected by all the organs of the State, that Police Law is not law and that freedom requires an efficient legal system which inspires public confidence and protects essential liberties. In a democratic State functioning under a written Constitution it is impossible to expect that the Constitution would be the result of the ordinary

* Thesis read at the Administrative Law Seminar, Delhi on 15th December, 1957.

law of the land. The Fundamental Rights have been consciously placed on a high pedestal by the makers of the Indian Constitution. The Supreme Court repelled the contention urged by the State Counsel and held that under the Constitution of India the highest Court is constituted the protector and guarantor of Fundamental Rights and consistently with the responsibility laid upon it, the Court cannot refuse to entertain an application seeking protection against infringement of Fundamental Rights and such applications can be made direct to the Supreme Court without reference to the High Court which has concurrent jurisdiction in the matter. This great principle which was laid down by the Supreme Court of India in the very first year of its existence in the *Cross-Roads Case*[1] has been emphasised and has not been in any way affected by the later decisions of that Court.

We should make an objective approach to the entire problem. With the expansion of national economy there is a demand for greater control and stricter regimentation and that will lead to the conferment of greater powers upon the executive. Many years back Chief Justice Hughes of the Supreme Court of the United States of America observed that the Congress could not delegate legislative power to the President and pointed out that the principle was vital to the integrity and maintenance of the system of Government ordained by the American Constitution. (*Wichita* v. *Public Utilities Committee of Kansas.*[2]) In the *Panama Sugar Refining Case*[3], the Supreme Court struck down the N.I.R.A. on the ground of unconstitutional delegation of legislative power, but it made pertinent observations :

"The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national Legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicability which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorisations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility".

Lord Hewart's scathing exposure of the New Despotism led to a searching enquiry by a high-powered Committee in England which pronounced the verdict that delegated legislation was necessary and inevitable.

From my experience as the Chairman of the Parliamentary Committee on Subordinate Legislation for some time. I can say that having regard to the quantity of legislative output and the limited time available to Parliament and the impracticability of anticipating difficulties in the actual working of a complicated measure delegated Legislation is bound to increase in order to meet the expanding needs of a progressive welfare State. The old concept that the State existed for the maintenance of law and order has been exploded. If India's Second Five Year Plan is to succeed, there is bound to be more direct and indirect control over the economic life of the nation and the resources of the State. Both national planning and provision for social services will necessitate the making of detailed regulations and the imposition of various restrictions. From our experience we can say that the focus of enquiry should shift from the question of desirability of delegation to that of control and the problem is really one of safeguards. It is impossible for the Parliament even if the Leader of the House is anxious to accommodate the Members to find the time to enable them to devote proper attention to the making of detailed regulations which the modern State demands, and the legislators often suffer from the handicap of not being properly instructed in many technical fields where a modern Parliament has to legislate. The difficult question how to secure adaptability or flexibility and at the same time to ensure compliance with the will of the nation

1. (1950) S.C.J. 418 : (1950) 2 M.L.J.
o : (1950) S.C.R. 594.
2. 260 U.S. 48.
3. 293 U.S. 388.

is reflected in the Legislature. Protagonists of Administrative Law should remember the admonition administered by Mr. Justice Cardozo of the Supreme Court of America in the *Schechter Case*[1] that the delegated power of legislation should not run riot. It should be canalised within banks that keep it from overflowing. It must not be "unconfined and vagrant". (*Schechter Case*[1].) The Cardozo doctrine was accepted as laying down the correct law by the Supreme Court of India in the *Delhi Laws Act Case*[2]. But the question is how to secure compliance with the doctrine laid down in that case. The majority Judges in that case rejected the extreme contention put forward by the Attorney-General that an unlimited right of delegation is inherent in the legislative power itself. The majority held that this view was not warranted by the provisions of the Indian Constitution. The Legislature must legislate. It must retain in its own hands the essential legislative functions and the legitimacy of delegation depends entirely on its being used as an ancillary measure. It is easy to lay down the doctrine but it is very difficult to secure its compliance. The question is what steps should be taken to find that the Parliament and the State Legislature are discharging their essential legislative functions and that they are declaring their legislative policies and laying down standards which are formulated into precise binding rules of law. The line of demarcation is rather thin and the Law Institute would render a great service if it can devise effective safeguards to prevent the abdication of the essential legislative functions on the part of the Parliament or State Legislatures in India as well as Executive enroachments on law-making by disguised trespasses.

Special attention should be drawn to some of the later Judgments of the Supreme Court where the salutary principle adumbrated by Justice Cordozo and recognised in the *Delhi Laws Act Case*[2] has been somewhat whittled down. Uncanalised delegation should not be permitted by mere formulation of so-called legislative policy in vague terms in a statute. The Legislature and the lawyer both require guidance on this subject.

The Committee on Subordinate Legislation in the Indian House of the People was nominated by the Speaker in December, 1953. That Committee made certain recommendations in their First Report which are set out :—

(*i*) Bills containing proposals for delegation of legislative powers should invariably be accompanied by a memorandum containing the details and scope of such proposals.

(*ii*) Uniformity should be secured in the provisions delegating legislative powers in the various Acts.

The Speaker of the Indian Parliament appointed one of the Opposition Members as Chairman on this Committee and that is in conformity with the British practice which is a desirable one. It will be a great comfort for the citizens of India to know that the Speaker of the House of People took special care that Parliament should have effective control whereby it could ensure that powers were being properly exercised by the executive. Although delegation of legislative powers to some extent was inevitable having regard to the pressure on Parliamentary time and the technical nature of the subject-matter of modern legislation and the demand for flexibility and utilisation of experience in working out complex schemes of reform, certain suitable safeguards are still requisite :

(*a*) While delegating the powers to Executive the Parliament should use clear and consistent terminology.

(*b*) Subordinate law-making authority should not be given power to amend the Statute in any manner which has been passed by the Legislature.

(*c*) The Legislature should be careful to preserve the jurisdiction of the Courts of Law and access of the citizens to the Courts should not be forbidden except in very exceptional cases.

1. 295 U.S. 495.

2. (1951) S.C.J. 527 : 1951 S.C.R. 747.

In a Memorandum prepared by the Speaker of the House of the People in the year 1950 which was forwarded to the then Law Minister certain pertinent observations were made :—

"At the present time Parliamentary control over delegated legislation is defective in two respects :—

(a) Legislative powers are freely delegated by Parliament without the members of the two Houses fully realising what is being done.

(b) Although many of the regulations made in pursuance of those powers are required to be laid down before both the Houses and in fact they are so laid, there is no automatic machinery for the effective scrutiny on behalf of the Parliament as a whole and quantity and complexity are such that it is no longer possible to rely for such scrutiny on the vigilance of private Members acting as individuals".

To some extent the constitution of the Committee on Delegated Legislation has been useful in remedying the defects. But from our experience we should emphasize the need for greater Parliamentary control and vigilance over delegated legislation, and we should admit that adequate procedure to be followed by the administrative process in the formulation of statutory rules and regulation has not yet been developed. Legislative prescription of procedural requirement is often resented by the Departments concerned. The basic problem, as has been pointed out by Dr. Schwartz in his admirable treatise on American Administrative Law, is the democratization of the rule-making process without imposing such burdensome restrictions that Rules will either not be made, or policy will be driven underground.

A number of statutory orders had been laid on the Table of the House of the People after considerable delay. In some cases the delay was for five months and in some cases it was six months or more.

Competent authorities on Administrative Law like Professors Griffiths and Street have pointed out the difference between *procedural ultra vires* and *substantive ultra vires*. In some cases it will be desirable to ensure that the administration is required by statute to consult particular bodies or associations before making Subordinate Legislation. Democrary means Government by consent. It depends not merely on discussion in Parliament but on direct and indirect consultation with the representatives of interested groups or bodies likely to be affected. In some of the British statutes the Minister is required to consult certain specified interests before making statutory orders or instruments. The power to draft an instrument may be delegated to the group or association concerned and the Minister may become a confirming or approving authority. In some recent British Statutes, regulations are to be submitted to a statutory body by the Minister and the report of that body is to be laid before the Parliament. Any one with experience of the working of a democratic Legislature knows that it is of very little practical ultility to direct that when an Act delegates power to the executive, the Subordinate Legislation should be laid before the Parliament. In such cases Subordinate Legislation is valid when it is made and the Members are not authorised to move for the annulment of Subordinate Legislation nor is the Government required to bring the Resolution of the House before it becomes operative. I would commend for the consideration of both the Parliament and of the Law Institute the suggestion that it would be more effective to direct that Subordinate Legislation should be laid before Parliament and must be made subject to an affirmative resolution by each House of Parliament. Some departments may resent such safeguards in special cases and then there may be provision that the Subordinate Legislation should be laid in draft before the House and made subject to annulment within a specified period.

The time has come when lawyers and Judges should reconsider the validity of the traditional rule of construction which forbids them to refer to Parliamentary debates or Statements of Objects and Reasons or Reports of Commission. Lord Justice Denning pointed out the difficulties that Judges have to face when they are

set to work " on the constructive task of finding the intention of Parliament ". A Judge must do this not only from the language of the statute but also from a consideration of the social conditions which give rise to it and of the mischief which it is meant to remedy. There is good deal of force in the weighty observation of the learned Judge when he says that " the Court must supplement the written word so as to give 'force and life' to the intention of the Legislature " : *Seaford Court Estates Ltd.* v. *Asher.*[1]

In one case the Supreme Court of India held that speeches made by Members of the House of Parliament on the floor of the House are not admissible as extrinsic aids to the interpretation of statutory provisions : (*Aswini Kumar Ghosh* v. *Arabinda Bose*)[2]. Sastri C.J., and three other learned Judges held that the statement of objects and reasons annexed to a Bill, the form of the original Bill and the fact that certain words and phrases were added to or omitted from the original Bill are also not admissible as aids to the construction of statute. In another case, the Supreme Court referred to the statement of objects and reasons for ascertaining the conditions prevailing at the time it actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy : *The State of West Bengal* v. *Subodh Gopal Bose.*[3] In a recent case, Das, C.J., quoted with approval the dictum of Lord Halsbury "that it was not only legitimate but highly convenient to refer both to the former Act and to the asserted evils to which the former Act had given rise, and to the latter Act which provided the remedy ": *Bengal Immunity Co.* v. *State of Bihar.*[4]

In England Judges have on some occasions set aside Subordinate Legislation on the ground of repugnancy to the fundamental liberties of citizens. In *Chester* v. *Bateson*[5], the learned Judges declined to construe a Regulation so as to avoid violation of the provisions of Magna Charta and the Bill of Rights and the Fundamental liberties of the British subjects to have access to the Courts. Fortunately under the Indian Constitution it is a constitutional obligation of the Court to strike down statutes which infringe the Fundamental Rights. The greatest difficulty of judicial control over Subordinate Legislation is the conservative view which was adopted by some Judges following *Lockwood's case*[6]: There the House of Lords held that a provision that an order made shall have effect " as if enacted by the Act " was practically immune from judicial review, and as long as the Act remained in force, it was not competent to question its validity or the order.

Lockwood's case[6] was explained in later cases and it has been held that an Act which provides that an order made by the Minister shall have effect as if enacted in the Act does not preclude the Court from calling in question the order of the Minister when the scheme of the order made by him is not consistent with the provisions of the Act : (*Minister of Health* v. *The King* (*Yaffe*)[7]).

The greatest difficulty is created by sub-delegation, and the Indian Law Institute would render a signal public service if it can prescribe certain limits by which a Minister to whom authority is delegated by Parliament or Legislature is permitted to sub-delegate his authority to his officials.

Judicial control over the exercise of legislative powers by the executive is restricted because it can only be effective when the subordinate legislation is *ultra vires* or *mala fide*. Necessity for the order or the adequacy of evidence before the Minister or officer is ordinarily outside judicial purview. It is often urged that the English Courts had taken a very narrow view and comments had been made on Lord Green's judgment in the *Ayr Collieries Case*[8]. The Supreme Court of India has not taken such a restricted view, and it has held that the grounds on which the executive acts must have rational relation to the objects of the statute ; otherwise the orders

1. L.R. (1949) 2 K.B. 481.
2. (1953) S.C.R. 1 : 1952 S.C.J. 568.
3. (1954) S.C.J. 127 : (1954) S.C.R. 587.
4. (1955) S.C.J. 672 : (1955) 2 M.L.J. (S.C.) 168 : (1955) 2 S.C.R. 603.
5. L.R. (1920) 1 K.B. 829.
6. L.R. (1894) A.C. 347.
7. L.R. (1931) A.C. 494.
8. L.R. (1943) 2 All E.R. 546.

even in preventive detention cases would be illegal : (*Atma Ram's case*[1] and *Pepsu Case*[2]). The Australian High Court has struck down as *ultra vires* Regulations made by the executive under the authority of the Commonwealth Statutes if the same went beyond the powers of the Commonwealth: (*Victorian Chamber* v. *Commonwealth*)[3].

The great impediment to judicial control is the tendency to vest in the Minister subjective discretion to act by the use of expression " if the Minister is satisfied ". In *Nakudda Ali's case*[4], Lord Radcliffe observed : " If the question whether the condition had been satisfied is to be conclusively decided by the man who wields the power, the value of the intended restraint is in fact nothing ". Lord Radcliffe's dictum was quoted with approval by Mukherjee, J., in *Advani's case*[5]. The other impediment is the attempt to oust the invocation of the rule of *audi alteram partem* on the plea that the Minister is not under a duty to act judicially. *Franklin's case*[6] in England has been subjected to strong criticism. When the order made by a Minister affects citizen's right to property, it is desirable that the Minister should be under a duty to act judicially at some stage so that the principles of natural justice may be invoked in suitable cases.

In cases where the delegated legislative power is to be exercised on the mere subjective satisfaction of a Minister or Officer, the scope for justiciability of the Rules or Orders should not be restricted. Even in such cases, the Rules or Orders made on the subjective satisfaction of a Minister or designated official should be open to review, if they are not consistent with the policy of the parent Act, and reference should be permitted to the standards which should be formulated in the Act and also to the Statement of Objects and Reasons placed before the Legislature when the Bill was sponsored.

---

1. (1951) S.C.J. 208 : (1951) 1 M.L.J. 389: 1951 S.C.R. 167.
2. (1954) S.C.R. 276.
3. 67 C.L.T. 413.
4. L.R. (1951) A.C. 66.
5. 1950 S.C.J. 451 : (1950) 2 M.L.J. 703 : 1950 S.C.R. 621.
6. L.R. (1948) A.C. 87.

RESPONSIBILITY OF THE MINISTER IN PUBLIC ADMINISTRATION : A COMPARATIVE STUDY*

By

C. S. SUBRAMANIA AYYAR, *Advocate, Madras.*

(*Author, "Planning the Indian Welfare State" and the "Law of Emergency."*)

The Minister in England is subject to Parliamentary control. Rules of Parliamentary procedure provide that the Minister may be questioned about the actions of those who are under his administrative control. Bias on the part of the subordinates in the administration can be questioned in Parliament. No Parliamentary debate can be held on the conduct of Judges. Free Parliamentary criticism can be had on the general field of administration and it is the responsibility of the Minister to meet such criticism.

The House of Commons controls policy of the Administration by the address in reply to the King's speech, the supply debates, adjournment motions, and question time. The House of Commons does not formulate policy but only criticises it. In actual control of finance, the control is limited to the debates on the Budget resolutions and the Finance Bill. The Estimates Committee and Public Accounts Committee try only to guide but cannot actually control expenditure. Every day close scrutiny over expenditure would make Government impossible. What happens in fact is, that Government explains and defends its policy, acts on their policy and is questioned, criticised and defended on its action. This is the only way in which Government can be effective.

JUDICIAL REVIEW.

The Minister's acts are generally subject to judicial review, excepting those exempted specially by legislative provision, which has become the present-day habit in regard to welfare and crisis legislation, but even in such cases, Courts have held they are subject to judicial review in certain cases. Administrative acts and orders of the administrative Tribunals will be declared illegal and *ultra vires* by the Courts if there is no jurisdiction to carry them out. Acting in excess of jurisdiction or for want of it can be both subject to judicial review. The review used to be effected by the writ of *certiorari* and the writ of error. The High Court in its supervisory jurisdiction subjects them to reivew. The Courts will review any acts or orders passed by tribunals done in bad faith. Non-compliance with procedural requirements will subject them to review. Judicial review is available for acts or orders passed in breach of natural justice. Error in law apparent on face of record is also subject to review by *certiorari*. The Courts have claimed the right to interfere with the exercise of an administrative discretion if the administrative Tribunal acts against the principles of natural justice and is arbitrary, vague and fanciful. If powers are used for improper purpose or if they are used without taking into account all relevant considerations, judicial review is allowed.

The leading case for review on the ground of improper purpose is *Leeds Corporation* v. *Ryder*[1], where Lord Loreburn said, that administrative Tribunals must endeavour to carry out the spirit and purpose of the statute. Ministers, who wanted to avoid judicial control have frequently vested in them subjective discretionary power, by using the words in the enactment "if the Minister is satisfied" : see *Liversidge* v. *Anderson*[2] and *Carlton Limited* v. *Commissioners of Works*[3]. The Courts in those cases held, that though such expressions may prevent the Courts from deciding whether the Minister has reasonable ground for his belief, or from reviewing his acts because he took into account the wrong considerations, yet opined that they would quash if the powers were not exercised in good faith.

* Thesis read at the Administrative Law Seminar, in the Indian Law Institute New Delhi, on 16th December, 1957.

1. L.R. (1907) A.C. 420.
2. L.R. (1942) A.C. 206.
3. (1943) 2 All E.R. 560,

Lord Sumner in *Robert* v. *Hopwood*[1], has laid down that the defence that the Minister's acts or conclusions of the Tribunals are *bona fide*, will be of no avail if the discretion is used beyond their powers. In the leading case of *Westminster Corporation* v. *L. N. W. Ry.*,[2] it was held that bad faith must be specifically proved. This enables the administration to throw the burden of proof on the plaintiff. The purpose of the administrative body is a question of fact and very difficult to prove. If the result contemplated by the administration is legal, the Courts will not quash the acts or orders merely because one of the motives which activated them is extraneous to the issue.

Ignorance of material considerations or the importing of extraneous considerations will nullify the acts of administration. (*Robert* v. *Hopwood*[1].) The Courts are thereby ensuring only that the discretion is properly exercised, that is according to law. But erroneous interpretation of the statute is not an excess of jurisdiction (*R.* v. *Minister of Health*[3]). In *Robert* v. *Hopwood*[1], the House of Lords held that the enumeration of the words "if it thinks fit" cannot entail the local authority to be guided by eccentric principles of the socialistic philanthropy so as to enable them to pay such wages as they think fit, and such act is *ultra vires*. "Unreasonable" acts are also subject to judicial review. Any decision not genuinely arrived at by a Tribunal must come under that category.

The attempt to cut down the appellate powers of the Court by legislation, has not been successful as the Courts have held that the provision "the decision shall be final and not subject to appeal to any Court" does not exclude judicial review. (*R.* v. *Minister of Transport*: Ex-parte *H. C. Motor Works, Limited*[4]).

Canadian Courts have forcibly declared many attempts to exclude judicial review, as unconstitutional. In such cases, Courts have held that the acts must be strictly within jurisdiction. (*R. E. X. X. Rel. Davies* v. *Macdougall Construction Co., Ltd.*[5]). The Privy Council in *Colonial Bank of Australia* v. *Williams*[6], has laid down that the Courts can still quash on the ground of a manifest defect of jurisdiction in the Tribunal that made it, or manifest fraud in the party procuring it.

The methods of review are by writs of *certiorari*, prohibition, *mandamus*, Declaratory Judgments, Injunctions, *Habeas Corpus*, Actions for Damages, etc. I am not going into the details of the methods of judicial review as it is not my province in this thesis.

The writ of *certiorari* is issued in India under the wide powers given under Articles 32 and 226 of the Indian Constitution and English Law is applied liberally. *Basappa* v. *Nagappa*[7].

With tremendous increase in the administrative functions of the Minister and the creation of a number of administrative bodies and Tribunals, the usual rule that the King can do no wrong, *i.e.*, by clothing the sovereign with immunity for his acts, had to be modified, and two decisions of the House of Lords restrained the immunity of the Crown on the ground of the Royal privileges. (*Mersey Docks and Harbour Board Trustees* v. *Cameron*[8].) The Crown Proceedings Act subjects the Crown, with serious reservation to private law.

Administrative authorities are subject to be sued for torts of their servants in the course of their employment. Actions for non-performance of statutory duties, misfeasance and non-feasance are also entertainable.

SCOPE OF JUDICIAL CONTROL.

Sir Cecil Carr in his book on 'Concerning Administrative Law' at page 108 is of opinion that "The administrative Tribunal would find the facts, and the Courts would not interfere unless the absence of evidence or the perversity of the finding required them to intervene".

1. L.R. (1925) A.C. 578.
2. L.R. (1905) A.C. 426.
3. L.R. (1939) 1 K.B. 232.
4. (1927) 2 K.B. 401.
5. (1930) 1 D.L.R. 629.
6. (1874) L.R. 5 P.C. 470.
7. (1955) 1 S.C.R. 250: 1954 S.C.J. 695.
8. (1864) H.L.C. 443 : (1866) L.R. 1 H.L. 93.

This suggested division of labour is not fully carried out, however, for constitutional principles require some judicial review upon facts, as well, as Anglo-Saxon Jurisprudence is based on the Rule of Law or supremacy of the law. In essence, the question whether the administrative finding of fact rests on substantial evidence is really a question of law, for a finding not so supported, is arbitrary, and unauthorised.

As regards jurisdictional facts, Courts have the power to take additional evidence to decide whether such facts exist, as laid down in *White and Collins* v. *Minister of Health*[1]. The Courts are given the power to review the evidence tendered by Administrative Pension Appeal Tribunals[2] by which the statement of the Minister that a particular evidence is conclusive, is taken for granted. If the evidence as tendered is arbitrary, the Courts can refuse to accept it, and declare the tribunals' findings of fact as unfounded, and *ultra vires*, as it is an abuse of jurisdiction.

American Courts have satisfied themselves that if there is substantial evidence to support the findings of fact of administrative tribunals, there is no objection to Courts of law proceeding on the basis of their findings. The Courts have only to see if the finding is supported by evidence, and is not concerned with the weight of the evidence. (Observation of Justice Hughes in *St. Joseph Stock Yard Co.* v. *United States*[3].)

The Supreme Court of America has held in *Humphreys* v. *United States*[4], that Article 3 of the Constitution debars Constitutional Courts from reviewing issues of facts, even in controversies of a judicial nature, as such issue were heard and determined in the first instance by an administrative agency. The judgment is based on the ground that administrative judgment or executive judgments are outside judicial review by the doctrine of the separation of powers, unless they involve question of law (refer to the following cases), *Southern Pacific* v. *Darnall Lumber Co.*,[5] *Grand Northern Railways Co.*, v. *Merchants Elevator Co.*,[6] *Baer Bros. Mercantile Co.* v. *Danier and Rio Grande Ry. Co.*[7], *United States* v. *Burleson*[8] *United States* v. *Durell*[9].

The committee on Minister's powers in England had this distinction in mind, and limited its recommendations of appeals from executive decisions to points of law and went so far as to say that there should be as a rule no appeal to any Court of law on issues of facts, and this goes beyond the American principle of limiting reviews to cases governed by the substantial evidence rule.

But the distinction between law and fact, is not always clear, and some authors say, that when Courts are inclined to review, they say it is a question of law, and when they are disinclined to review, they classify it as a question of fact.

In *Dobson* v. *Commissioner*[10], the substantial evidence rule was said to be applicable to tax cases. Sometimes, facts are classified as mixed questions of law and fact.

The jurisdiction of the reviewing Courts is limited to questions of law. It does not extend to question of fact but it is left to the discretion of the reviewing Courts to ultimately decide whether one particular issue relates to fact or law.

Administrative findings of fact, whether they are without evidentiary support, is a question of law. As laid down by Swift, J., In re, *Bowman*[11], the Court cannot interfere with the administrative fact findings, provided only, that there was some evidence to support them. *See also* In re, *Beanbridge*[12].

In this sense, English Courts give greater weight to administrative facts than American Courts, for there is no necessity to apply the substantial evidence rule in England. In England, proof of 'no evidence' alone will invalidate the findings. Even if there is some evidence it will do to support the administrative fact. Ameri-

1. L.R. (1949) 2 K.B. 838.
2. L.R. (1945) K.B. 490.
3. (1936) 298 U.S. 38.
4. (1935) 295 U.S. 602.
5. (1918) 245 U.S. 531.
6. (1922) 259 U.S. 255.
7. (1914) 233 U.S. 479.
8. (1921) 255 U.S. 407.
9. (1899) 172 U.S. 576.
10. 320 U.S. 489.
11. L.R. (1932) 2 K.B. 621.
12. L.R. (1939) 1 K.B. 300.

can Courts have always required substantial evidence to support the findings of fact (*Consolidated Edison Co.* v. *National Labour Relations Board*[1]).

Questions of law are the province of Courts of law and both in England and in America, the administrative tribunal has no final word in deciding questions of law.

Mixed questions of law and fact have been pointed out in England as being questions which cannot be given always the finality of questions of fact, and English Courts have interpreted each question on its own merits.

Closely related to this question is the decision on jurisdictional facts, whether a tribunal has the power to decide the nature of its own jurisdiction if the facts on which its jurisdiction rests are questioned. In such cases, Courts must have the power to determine whether the condition for the exercise of the tribunal's jurisdiction were satisfied or not.

In cases of constitutional facts, that is, in cases where the interpretation of certain facts will lead to a constitutional right, the determination of the administration as to the interpretation cannot be final, and therefore judicial review will lie in such cases as decided by *Ohio Valley Water Co.* v. *Berevon Borough*[2] and *St. Joseph Stockyard Co.* v. *United States*[3].

Scope of review on the ground of discretion of the Minister, whether it is subjective or objective, has given room for litigation in England. Ministers who want to avoid judicial control, have frequently vested in them subjective discretionary power, by using the words in their enactment 'If the Minister is satisfied' (*Liversidge* v. *Anderson*[4] and *Carlton Ltd.* v. *Commissioners of Works*[5]). The Courts in those cases held, that though such expressions may prevent the Courts from deciding whether the Minister has reasonable ground for his belief, or from reviewing his acts because he took into account the wrong considerations, yet opined that they would quash if the powers were not exercised in good faith.

Courts of law have sometimes refused to view the orders of the tribunal as judicial, but styled them as purely administrative, and thus refused to interfere. In the famous Stevenage case (*Franklin and others* v. *Minister of Town and Country Planning*[6],) it was laid down that the Minister, being an agent of Parliament, can decide upon the construction of towns in a particular area and as his act is not a quasi judicial act subject to judicial review, it was purely administrative.

The decline of judicial review was further seen in the case of *Robinson and others* v. *Minister of Town and Country Planning*[7], where, on appeal, it was held that the words "requisite" and "unsatisfactorily" indicated that the making of the order was a matter of opinion and policy of which the Minister was sole judge, that no objective test was possible, that he was acting purely in executive capacity and not quasi-judicially. (*See* Lord Green, M.R.'s judgment).

So far as Indian Courts are concerned, judicial review is governed by Articles 32, 136 and 226, of the Indian Constitution and as regards Article 226, reference may be made to the judgment of the Supreme Court of India in *Raj Krishna Bose* v. *Binod Kanongo*[8], which held that the powers conferred on the High Court and Supreme Court by Article 226 of the Constitution could not be taken away or whittled down by the legislature. The discretion of the Supreme Court and High Court is unimpaired.

Article 32 of the Indian Constitution cannot be invoked in a case where the conclusions of fact have been made by the relevant authorities, and issues of licenses for controlling the export and import of soda ash, a material need of the community, the policy of regulating which has been laid down in the preamble of the legislation, cannot be said to be *ultra vires* as being delegated legislation, by the legislature parting with the power to frame its legislative policy. In modern times, legislative

1. 305 U.S. 197, 229.
2. (1920) 253 U.S. 287.
3. (1936) 298 U.S. 38.
4. L.R. (1942) A.C. 206.
5. (1943) 2 All E.R. 560.
6. (1947) 68 T.L.R. 185 (C.A.); 63 T.L.R. 446 (H.L.).
7. (1947) 63 T.L.R. 374.
8. (1954) S.C.J. 286, 289.

policy is largely a product of the age, and such definitions of administrative policy cannot be the ground for attacking a legislation as offending the fundamental right to trade or uncontrolled right to trade. This has been laid down recently by the Supreme Court of India in the case of *Batnagars and Co., Ltd.* v. *The Union of India*[1], following *Harishanker Bagla and another* v. *State of M.P.*[2]. Thus this judgment tends to narrow down the difference between law and policy in administrative law.

In India unlike in England, it has been held that where the legislature has performed its duty of laying down the policy of the enactment it can, not only delegate the function of subordinate legislation, but also authorise the delegates to re-delegate their function provided the sub-delegates are specified by the legislature itself. (*Mulchand* v. *The State*[3]).

Many statutes in India have provided for quasi-judicial powers in administrative bodies like (*a*) Custodian of Evacuee Property under the Administration of Evacuee Property Act, 1950, (*b*) Transport Authorities under the Motor Vehicles Act, (*c*) the Transport Board Authorities, (*d*) The Rent Controller under the State Rent Control Acts. Special tribunals like the Industrial Tribunals and Road Transport Authority have been invested with quasi-judicial powers.

The Indian Constitution makes provision for bringing these under the control of writs—the directions or orders or writs enumerated in Article 32 (2) and (3), Article 226 (1) (*b*)—and brings them under the superintendence of High Courts under Article 227 (1). An appeal is also provided against their orders by special leave (Article 136-C (1)). There is also the right for the litigant to proceed by way of ordinary suit against the authorities.

APPEAL AGAINST ACQUITTAL AND THE DOCTRINE OF COMPELLING REASONS

By

H. G. Panda, *Advocate, Orissa High Court.*

Prior to *Sheo Swarup's case*[4], the view of some Courts was that the High Court had no power or jurisdiction to reverse an order of acquittal on a matter of fact except in cases in which the lower Court has " obstinately blundered " or has through "incompetence, stupidity or perversity" reached such distorted conclusions as to produce a positive miscarriage of justice. In *Sheo Swarup's case*[4], the Judicial Committee, however, held that the High Court has full power under sections 417, 418 and 423 of the Criminal Procedure Code to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. But in exercising the power conferred by the Code and before reaching its conclusions upon fact the High Court should give weight and consideration to such matters as :—

(1) the views of the trial judge as to the credibility of the witnesses.

(2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial.

(3) the right of the accused to the benefit of any doubt and

(4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

Having laid down these principles, the Privy Council dismissed Sheo Swarup's appeal as their Lordships had no reason to think that the High Court had failed to take all proper matters into consideration while reversing the order of acquittal passed by the Session Judge of Cawnpore.

---

1. (1957) S.C.J. 546.
2. (1954) S.C.J. 637.
3. (1952) 56 C.W.N. 789 ; C.R.P. No. 7 of 1953.
4. L.R. 61 I.A. 398 : I.L.R. 56 All. 645 : 67 M.L.J. 664 (P.C.).

The above four principles were reiterated by the Judicial Committee in *Nur Mahmad* v. *Emperor*[1]. *Sheo Swarup's case*[2] laid down the law on the subject for the guidance of all the Indian High Courts.

In *Surajpal's case*[3], their Lordships Fazl Ali and Bose, JJ., set aside the conviction and sentence passed by the High Court of Allahabad and restored the order of acquittal passed by the Sessions Judge of Aligarh on charges of murder and rioting. Their Lordships observed :

"....It is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court....can be reversed only for very substantial and compelling reasons".

The doctrine of substantial and " compelling reasons " which expression was first used in *Surajpal's case*[3] was examined and its history ascertained by the Supreme Court in *Aher Raja Khima* v. *State of Saurashtra*[4].

The accused in this case was tried on a charge of murder and acquitted by the Sessions Judge. On appeal by the State the accused was convicted by the High Court. On appeal to the Supreme Court Mr. Justice Bose and Mr. Justice Chandrasekhara Aiyar held that the Sessions Judge gave good reasons to find that the confession, the only evidence, was not voluntary and was retracted at the earliest opportunity. No Police Officer was examined to displace the charge of threat and coercion. A few other circumstances were consistent with the innocence of the accused. Hence their Lordships allowed the appeal and held that the High Court had no strong and "compelling reasons" to set aside the acquittal.

Mr. Justice Venkatarama Ayyar differed from the majority view and held that the appeal ought to be dismissed. His Lordship observed:

1. That the scope of appeals against acquittal is not different from that of other appeals. In appeals the burden of showing that the judgment appealed from is wrong is upon the appellant. " When the State appeals against an order of acquittal it has to establish on the evidence that the accused is guilty and to establish it, it has to satisfy the Court that the judgment of the trial Court is erroneous. The oft-repeated observation that on acquittal the presumption of innocence becomes reinforced is merely this principle stated in terms of Criminal Law."

2. " Likewise the weight to be attached by an appellate Court to a finding of the trial Court based on appreciation of oral evidence is the same whether it is given in a civil litigation or in a criminal trial ".

3. An appeal against acquittal under section 417 stands as regards the power of an appellate Court on the same footing as appeals against conviction.

4. " The words ' compelling reasons ' are not legislative expression. They are not found in section 417. As far as I have been able to discover, it was first used in (*Surajpal's case*)[3]...The words are vague and indefinite to a degree". Sometimes even " when Judges hearing appeals under section 417 were convinced of the guilt of the accused they refrained from setting aside the order of acquittal owing to the dark and unknown prohibition contained in the expression ".

5. "To fetter the right to appeal against acquittal through such expressions as ' compelling reasons ' would not merely be to legislate but to defeat the plain intentions of the Legislature that the accused in an appeal against acquittal should have only those rights which the State in an appeal against a conviction or a respondent in a civil appeal has and that he is to enjoy no special protection."

6. " As no appeal on facts is provided, the decision of the High Court is not open to review by the Supreme Court under Article 136 on the ground that there were no compelling reasons for the learned Judges of the High Court to reverse an order of acquittal."

These are, if I may say so with respect, weighty observations. Questions of fundamental importance have been raised in the minority judgment. The Supreme

---

1. (1945) 2 M.L.J. 362 (P.C.).
2. L.R. 61 I.A. 398 : I.L.R. 56 All. 645 : 67 M.L.J. 664 (P.C.).
3. (1952) S.C.J. 32 : (1952) 1 M.L.J. 426.
4. (1956) S.C.J. 243 : (1956) 1 M.L.J. (S.C.) 135 : (1955) 2 S.C.R. 128 .C.).

Court, it is submitted, will reconsider the question and give a final answer to the questions raised.

A Division Bench of the Bombay High Court in *State of Bombay* v. *Vithal Maruti*[1], had to dismiss the appeal by the State as the Court was bound by the doctrine of 'compelling reasons'. Their Lordships however observed as follows :—

> "It is quite true that the earlier decisions of the Privy Council *Sheo Swarup* v. *King-Emperor*[2] and *Nur Mohammad* v. *Emperor*[3], where this question has been examined on principle and in the light of the provisions of section 417 were not cited before the Supreme Court. It is also true that their attention was apparently not drawn to the fact that there was a sharp difference of opinion on this question which had been taken before the Privy Council and the Privy Council had expressed themselves against the view that sought to impose limitations upon the powers of the appellate Court in dealing with criminal appeals against acquittal under section 417, Criminal Procedure Code".

It has also to be decided by the highest Court whether the rigour of the rule against interference with orders of acquittal is less in cases where the High Court is to examine the grounds of acquittal of a person who was convicted by the trial Magistrate but acquitted on appeal by the Sessions Judge. That it is somewhat less is the view taken in two Mysore cases : (1) *State* v. *K. Basappa*[4] and in (2) *State* v. *Sampangiramiah*[5]. Reliance was placed in the first Mysore case on *Emperor* v. *Md. Khan*[6] where it was held that whatever may be the value of the judgment of a trial Court which has had the opportunity of seeing the witnesses and observing their demeanour no such reason can apply where the trial Court convicted the accused and it is the appellate Court which acquits.

There is force, if I may say so, in these observations. It has to be remembered that in *Sheo Swarup's case*[2] the trial Court acquitted and the High Court convicted the accused. Similarly in *Surajpal's case*[7] and in *Aher Raja Khima's case*[8] the trial Court acquitted and the High Court convicted the accused.

Another point which does not appear to be covered by authority is whether the High Court hearing an appeal under section 417 (3) has the same powers and limitations as in the case of an appeal under section 417 (1), Criminal Procedure Code. Once special leave is granted, both classes of appeals, it is submitted, stand on the same footing and should be disposed of on the same principles.

SOME ASPECTS OF THE LAW OF COMPENSATION FOR RAILWAY ACCIDENTS

By

M. MUTHUSWAMY, B.A., B.L., *Advocate, Tiruchirapalli.*

The recent rise in the frequency of Railway accidents calls for an examination of the principles of liability of the Railway Administration to pay compensation in respect of the accidents.

Sections 82-A to 82-H of the Railways Act IX of 1890 provide for payment of compensation for loss occasioned by death of a passenger dying as a result of the accident and for personal injury and loss or deterioration of movables owned by the passenger sustained as a result of such accident. Pursuant to the section 82-A the Railway Accidents (Compensation) Rules, 1950, have been framed to carry out the object of sections 82-A to 82-H.

The liability under the statute is independent of any wrongful act or neglect or default on the part of the Railway administration such as would entitle a

---

1. A.I.R. 1953 Bom. 369.
2. (1934) 67 M.L.J. 664: L.R. 61 I.A. 398 : I.L.R. 56 All. 645 (P.C.).
3. (1945) 2 M.L.J. 362 (P.C.).
4. A.I.R. 1953 Mys. 75.
5. A.I.R. 1953 Mys. 80.
6. A.I.R. 1930 Lah. 403.
7. (1952) S.C.J. 32 : (1952) 1 M.L.J. 426.
8. (1956) S.C.J. 243: (1956) 1 M.L.J. (S.C.) 135 : (1955) 2 S.C.R. 1285 (S.C.).

person who is injured or has suffered a loss to maintain an action in tort. Still, a suitor is seldom in a position to successfully prove negligence of the Railway as a substantive fact, not to speak of the possible defences open to the State-owned Railways. The result is that recourse is mostly had to the statutory right to obtain compensation.

As one who had appeared in several proceedings last year before the Claims Commissioner for the Ariyalur Railway disaster of November 23, 1956, the writer seeks to point out some of the lacunae in the Act and the rules and offer suggestions for amendment as set out *infra* :

1. The maximum limit to the compensation awardable to any one person for death or disablement and for loss of goods, etc. is fixed at Rs. 10,000 in clause 2 of section 82-A (inserted by Act III of 1943). Quite apart from modern notions regarding the dignity and worth of the human person, the maximum limit could be easily raised to Rs. 20,000 in view of the increase in the earning capacity, actual and potential, of individuals and the enhanced cost of living and of personal effects in an inflationary economy.

2. The rules contain a schedule detailing the rates of compensation according to the monthly salary or the annual income of the deceased or injured person. Unless a passenger is an earning member on the date of the accident no compensation can be granted to him in case of disablement caused by the injuries or to his dependants in case of his death. It is a moot question whether a highly qualified university or professional man waiting to be employed or his heirs can have the benefit of the provision. Again, what about the passenger who is a minor ? In case of death of a minor child, whether or not it may be proper to apply the principle of loss of service recognised in actions for seduction, compensation could be paid to the parent not merely on the ground of loss of child as such (*i.e.*,) as a potential wage earner but also on the ground of grief and distress. In case of disablement, payment of compensation to a minor can be justified on the basis of loss or curtailment of physical and mental faculties and also on the basis of shortened expectation of life besides anguish caused.

3. Further, as pointed in *Sureshchandra Ray* v. *East Indian Railway*[1], there is a lacuna in the rules in so far as they have not provided for rates of compensation payable in respect of temporary disablement. In the instant case, the Patna High Court allowed some compensation to a person who has sustained loss of earning by reason of slight injuries and by his being confined to bed for some days. Ahamad, J., in dealing with the question observes "the lacuna requires immediate attention of the authorities concerned. Otherwise there will be a regular source of confusion in the matter of awarding damages in cases covered by section 82-A. The definition under the Workmen's Compensation Act, 1923, includes disablement both of a temporary or a permanent character. It is obvious that what has happened is that definitions of partial disablement and total disablement as given in the Workmen's Compensation Act have been adopted *in toto* but the schedule of different tables given in the Workmen's Compensation Act for partial disablement and total disablement has been adopted *only in part* giving rise to a lacuna therein ".

4. Neither section 82-A nor the rules give any indication that medical expenses reasonably incurred by the injured persons have to be taken into consideration in fixing the amount of compensation.

5. A more intelligible, precise and rational definition of " dependants " could be thought of instead of merely copying the definition of the term given in the Workmen's Compensation Act which has led to a vast mass of conflicting authority.

Will the Union Government revise the rules in the light of the above and place them before the Parliament as required under section 82-J (3) of the Act ?

---

1. A.I.R. 1954 Pat. 507.

MADRAS AGRICULTURISTS' RELIEF ACT—SECTION 13-A

By

G. V. VENKATARAMA AYYAR, *Advocate, Kumbakonam.*

As remarked by Mr. Justice Venkataramana Rao in *Official Receiver, Guntur* v. *Seshayya*[1], "every section (of the Act) bristles with difficulties and it is no wonder that the Act has become a fruitful source of litigation". Anamolies in the Act have been pointed out from time to time by the High Court, but most of them are still to be rectified. The last Amending Act is Act XXIV of 1950 and it is high time that a fresh Amending Act is passed by the Legislature correcting at least the glaring anamolies in the Act.

There are anamolies even in the Amending Acts. One glaring example is section 13-A added to the main Act by section 8 of the Amending Act XXIII of 1948. This new section reads "Where a debt is incurred by a person who would be an agriculturists as defined in section 3 (ii) but for the operation of Proviso B or Proviso C to that section, the rate of interest applicable to the debt shall be the rate applicable to it under the law, custom, contract or decree of Court under which the debt arises or the rate applicable to an agriculturist under section 13, whichever rate is less".

In the case reported in *N. V. Govindaraja Nadar* v. *T. Namadevar Reddiar*[2], their Lordships Mr. Justice Somasundaram and Mr. Justice Ramaswami Gownder have held that the effect of section 13-A is to extend the benefit of the Act to all agriculturists irrespective of the ban imposed by Provisos B and C to section 3 (ii) of the Act and that the language of the section does not in any way restrict the debt to one incurred after the Act or Amendment.

With great respect to their Lordships, it does not seem to be clear that section 13-A applies to debts incurred after the commencement of the Act. Even as regards debts incurred before its commencement there is some obscurity as to whether it applies to all such debts. The matter seems to require clarification.

Ex facie, the section provides that even agriculturists coming within Proviso B of section 3 (ii) (paying profession-tax on a half yearly income of more than Rs. 600 in all the four half years immediately preceding 1st October, 1937) or Proviso C. (paying property or house tax on an annual rental value of more than Rs. 600 in all the four half years immediately preceding 1st October, 1937 of section 3 (ii) are bound to pay the rate of interest provided in section 13 which is 5½ per cent. per annum under the Government Notification, dated 7th July, 1947).

It is significant that though this new section refers to the rate of interest provided in section 13, it does not state that the benefit of the section extends to agriculturists as defined in section 13. The marginal note to section 13 states, "rate of interest payable by agriculturists on new loans," while the marginal note to section 13-A reads, "rate of interest payable by certain persons on debts" indicating thereby that the agriculturists for whose benefit section 13 is enacted are not the persons meant to be benefited by section 13-A.

If section 13-A applies even to agriculturists coming within the scope of *Explanation* (ii) to section 13, it will mean that *Explanation* (ii) is practically repealed as it would be a dead letter after the incorporation of section 13-A. If that were the intention of the Legislature, it could have expressly enacted to that effect. On the contrary, the amended definition of an agriculturist in section 13 with the Amended Provisos B and C, has been incorporated in the main Act by the same Amending Act XXII of 1948 which has added the new section 13-A. This shows

1. (1940) 2 M.L.J. 860 (868). 2. (1956) 2 M.L.J. 425.

that, section 13-A could not have been intended to negative the effect of the said amendment of Provisos B and C in section 13 by the same Amending Act.

It seems therefore that the new section 13-A cannot restrict the scope of section 13 which has been held to provide a complete machinery for scaling down of all debts subsequent to the main Act (Vide *Thiruvengadatha Aiyangar* v. *Sannappan Serval*[1].

The question then arises as to what extent it will affect agriculturists coming within the scope of Provisos B and C of section 3 (ii), which must be deemed to apply only to loans before the commencement of the Act as section 13 applies to all loans after the Act. Can section 13-A be taken as impliedly abrogating Provisos B and C to section 3 (ii)? In *Venkatanarayana Rao* v. *Champalal*[2], His Lordship the Chief Justice has stated " we fail to see anything in section 13-A which has the effect of repealing by implication Provisos B and C. That section deals only with one subject-matter *viz.*, the rate of interest payable by *certain* persons......It certainly does not confer any new procedural right on persons who did not have that right before the insertion of the section. We cannot attribute to the Legislature the intention of repealing portions of the Statute by implication when the Legislature could have expressly and simply obtained the same effect by direct repeal. Apart from this well approved canon of construction, our conclusion is also based on an interpretation of the language of section 13-A which does not lend any support to the contention."

These observations only show how obscure is the scope of appplication of section 13-A, even as regards all loans incurred before the commencement of the Act as section 13-A cannot co-exist with the Provisos B and C to section 3 (ii) which remain unrepealed either expressly or by implication. It follows that the decision reported in *N. V. Govindaraja Nadar* v. *T. Namdevar Reddiar*[3], requires re-consideration by a Full Bench.

If it is the intention of the Legislature to repeal Provisos B and C in both or either of section 3 (ii) and section 13, it should do so expressly and repeal section 13-A as being unnecessary: if it is the intention to retain them, section 13-A may be deleted. Till either course is adopted, retention of section 13-A in the Statute book only serves to furnish one more fruitful source of Litigation.

---

1. (1941) 2 M.L.J. 307.
2. (1951) 2 M.L.J. 530.
3. (1956) 2 M.L.J. 425.

PAST CONSIDERATION—A NOTE

By

K. Ponnuswami, M.L., *Lecturer, Faculty of Law, Delhi University.*

Our law of contract has accepted the principle, when it declares that an agreement enforceable by law is a contract[1], that all promises are not *ipso facto* enforceable[2] but only those promises are enforceable which conform to certain requirements of the law and has proceeded to prescribe[3] "consideration" as a *sine qua non* for the enforceability of a promise. Yet the provisions of the Contract Act as to what constitutes consideration are by no means satisfactory and are least conducive for evolving a theory of contract in our law. The Act has even failed to enunciate that consideration must be of some value in the eye of law and nowhere is it said that consideration must consist of some detriment to the promisee or benefit to the promisor. The Act is avowedly incomplete[4] and, therefore, our Judges have, not unjustifiably, resorted to the aid of the English law in interpreting its imperfect provisions. But the Act is far from a faithful codification of the English law and has often made radical departure. For instance, it has discarded the fundamental principle of that law that consideration must move from the promisee and has adopted a much wider definition of consideration. It is, therefore, dangerous to assume that the principles of the English law are applicable in this country without due regard to the provisions of the Act and it is of the utmost importance to examine the provisions of the Act independently and discover the extent to which they are at variance with the English law. It is a matter for deep satisfaction that the Law Commission has taken up, and perhaps completed, the task of revising this outdated[5] enactment and we hope that the law will be reformed thoroughly and placed on a firm foundation with that amount of certainty which this ever evolutionary branch of the law will admit of. Though the object of this note is not so lofty as to suggest reforms of the law, it may not be out of place to mention that any future revision of the Act ought to be a radical overhauling and that the law relating to consideration must be formulated in an exclusive chapter instead of being scattered, as it now is, over a number of oddly placed sections.

The only question that is proposed to be examined in this note is how far past acts or abstinences will constitute good consideration for a promise under our law.

The element of bargain is present in every contract and in English law consideration means something of value bargained for or exchanged for the promise. By using the analogy of sale, Pollock defines consideration as the price for which the promise is bought[6]. It consists more often in some detriment to the promisee and at others in some benefit to the promisor. This detriment must be suffered by the promisee in pursuance of the promise made to him. If he had suffered the detriment independently of and anterior to the promise, it is said to be past consideration and cannot support a subsequent promise. Hence it is said that "past consideration is no consideration." In fact "past consideration" is a misnomer in English law, compendi-

1. The Indian Contract Act, 1872 (Act IX of 1872), *Section* 2 (*h*).

2. *Cf.* German law which requires neither "cause" nor "consideration".

3. *Section* 25 : "An agreement made without consideration is void, etc." *Section* 10 : "All agreements are contracts if they are made. . . . . for a lawful consideration."

4. *See* the preamble.

5. "Unfortunately it (the Bill) had been sent out to India in a very crude form; it never underwent the patient, penetrating revision of a skilled draftsman necessary in the case of such a measure; and though the Indian judges have loyally endeavoured to give effect to its provisions, these are so incomplete and sometimes so inaccurately worded that the time seems to have come for repealing the Act, and re-enacting it with the amendments in arrangement, wording and substance, suggested by the cases decided upon it during the last fourteen years". Whitley Stokes: Anglo Indian Codes, Vol. I—(1887), page 534. The Act has, however, lived long and is now 85 years old.

6. Pollock on Contracts, 13th Edition, page 133.

ously used to denote acts or forbearances done or suffered independently of and anterior to the promise. They are unbargained for and unrelated events of the past which merely motivate the promise and are no consideration for it. Thus in *Roscorla* v. *Thomas*[7], where a horse was sold without warranty and later the vendor promised the buyer that the horse was free from vice, which it was not, it was held that there was no consideration for the new promise, the earlier sale being no consideration for it. To cite a recent case: In re *McArdle*[8], where a lady made vast improvements spending large sums of money to the house belonging to her husband and brothers-in-law without their request and was later promised by all of them to be compensated, the Court of Appeal held that the consideration was past and hence the promise was unenforceable. With the abandonment[9] of Lord Mansfield's doctrine of moral obligation the confusion that had surrounded English law cleared and it is now well-settled that past consideration is no consideration[10].

Turning to our law we find that it still controversial whether a past act or abstinence is good consideration for a promise and different conflicting views have been expressed. The more common view seems to be that "past consideration is good consideration " under our law[11], and that the Contract Act has departed from English law in this respect as in others. This view would appear to proceed from the words "has done or abstained from doing" used in the definition of consideration[12] which is said to give recognition to past consideration as good under our law. It is also argued that the cumulative effect of the definition in section 2, clause (*d*) read with section 25, clause (2) would be to render all past acts and abstinences good consideration for a promise under our law. The opposite view has also been expressed[13], that past consideration is no consideration in our law as in the English law, that the framers of the Act who were familiar with the English law had a "partiality" for that law and that the provisions of the Act do not warrant a conclusion that they intended to admit as good consideration what had been *in toto* rejected as no consideration in the English law.

In examining these two diametrically opposite views we should keep our mind free of the recommendations of the Law Revision Committee in England in 1937[14] for the admission of past consideration. We have to seek our law from the expressed provisions of the Contract Act, however unsatisfactory they might be in their exposition of the fundamental principles of the law of contract.

We can for the purpose of this inquiry broadly classify past acts and abstinences (hereafter called past services for the sake of brevity) into :

I. Past services rendered gratuitously—
 (*a*) at the request or desire of the promisor ;
 (*b*) without the request or desire of the promisor.

II. Past services rendered with no intention of doing so gratuitously—
 (*a*) at the request or desire of the promisor ;
 (*b*) without the request or desire of the promisor.

---

7. L.R. (1842) Q.B. 234.

8. L.R. (1951) 1 Ch. 669 : (1951) 1 All E.R. 905.

9. *Eastwood* v. *Kenyon*, (1840) 2 A. & E. 638 : 52 R.R. 400 exploded Mansfield's Doctrine.

10. In American law the general rule is identical with English law : Williston on Contracts, Section 142.

11. *Namberumal* v. *Veeraperumal*, 59 M.L.J. 596 : A.I.R. 1930 Mad. 956 at 960 per Ramesam, J., "In Indian law past consideration is good consideration, etc.—" T. S. Venkatesa Iyer's The Law of Contract, 2nd edition pages 90, 91.

12. *Section* 2, *Clause* (*d*) : "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise".

13. K. Venkoba Rao's Commentaries on the Indian Contract Act (1955), pages 27 and 28.

14. The Committee have recommended in their Sixth Interim Report : "That an agreement shall be enforceable, if the promise or offer be supported by valuable consideration, past or present".

I. Past requested and voluntary gratuitous services.—If services are rendered without any intention of claiming reward as of right, both parties having understood that the services were to be gratuitous, it is difficult to see how such gratuitous past services could form good consideration for a promise[15]. Though sections 2 (*d*) and 25 (2) would appear to be wide enough to cover such acts as well, it is submitted that they should be understood to refer to "something not intended to be gratuitous". "It is not reasonable that one should do another a kindness, and then charge him with a recompense"[16]. In such cases the promise is clearly gratuitous and is perhaps made for reason such as gratitude which are no more than motives for the promise. As Pollock observes[17], in such cases there is no "foundation for a contract". In *Raja of Venkatagiri* v. *Raja Rao Sri Krishnayya*[18] where the promise was made in consideration of advances which had been made "without any intention of claiming repayment", the Privy Council held that such consideration will not be good either under section 2 (*d*) or section 25 (2). That is a case to show that all past services will not be good consideration in Indian law. To hold that past gratuitous services will constitute good consideration for a subsequent promise would be to confound motive for consideration and there is no warrant for the view that the framers of the Contract Act intended to treat them as synonymous. "Voluntarily" in section 25 (2) does not imply "gratuitously". The American law is succinctly stated by Corbin on Contracts : "If the past unrequested performance was rendered as a gift, a subsequent promise of compensation made by the donee will not be enforced. Such is the case even though the gift performance was rendered as such at the request of the recipient"[19]. It is submitted that it is a fundamental principle of the law of consideration that a gratuitous act or abstinence cannot constitute consideration for any promise and that the law in India is the same as the English or American law[20] in this respect. It is not every promise that the law enforces, but only those fulfilling certain requirements, one of them being consideration. We are at liberty to abolish that requirement, if we feel that it is a historical accident of the English law that handicaps our law. But so long as it exists, it should serve a meaningful existence and ought not to be watered down to make its presence in the Act a farce. If this view is accepted, it makes little difference whether the past gratuitous service was rendered at the request of the promisor or voluntarily and in neither case will it fall under the provisions of the Act. It may not be out of place to point out here that where the past services were rendered gratuitously, the person benefiting by them is under no quasi-contractual liability either to make recompense for them[21]. No liability, either contractual or quasi-contractual, can arise out of such services. To sum up, "past gratuitous service is no consideration for a promise".

II. (*a*) Past services, not being gratuitous :

Rendered at the request of the promisor.—Such past services will clearly fall within the words of section 2, clause (*d*) : "When at the desire of the promisor, the promisee or any other person, has done or abstained from doing something such act or abstinence is called a consideration." There are no restrictions as to the nature of the past services or the subsequent promise and all that is necessary is that the promise should have been made in consideration of services rendered in the past at the request or desire of the promisor. It is a recognition of the principl in *Lampleigh* v.

15. A. C. Dutt's Commentaries on the Indian Contract Act, Ed. II, however, states at page 42: "Gratuitous services rendered at the request of the defendant are a good consideration for a subsequent promise to pay".

16. 1 Wm. Saund, 356 quoted in Pollock on Contract, Ed. 13, page 143, f.n. 52.

17 Pollock on Contracts, page 143.

18. I.L.R. (1949) Mad. 300 : (1948) 2 M.L.J. 260 (P.C.).

19. Corbin on Contracts, page 770, S. 234.

20. A few Courts in America have enforced such promises to pay for a past consideration, even though it was intended to be gratuitous at the moment it was given. But this view has not been taken by most of the Courts in the United States. *See* Williston on Contracts, pages 144 to 146.

21. Section 70, Indian Contract Act, *Illustration* (*b*).

Brathwaite[22] that a "mere voluntary courtesy will not have a consideration to uphold an assumpsit", but if the service was "moved by a suit or request" of the promisor, the promise "couples itself within the suit before". For long this principle was supposed to be an exception to the rule against past consideration but in modern English law it is no longer considered to be so and has been interpreted to apply to such cases where the past services rendered at request and the ensuing promise can be treated as single transaction *ab initio* and the past services would give rise to quasi-contractual liability even in the absence of the express promise. In the language of Dr. Cheshire and Mr. Fifoot, "the original request was accompanied by a tacit understanding of recompense, and even if no express promise had ensued, the plaintiff might still have recovered reasonable remuneration on a *quantum meruit*. The express promise did little more than relieve the Court of the necessity of valuing the services"[23]. The law in England on this matter still seems to be unsettled [24] and it is not clear whether part requested performance will support a promise made after any length of time or only a promise made after a reasonable time so that the performance and the promise might be regarded as one transaction. In India the principle has been couched in the widest terms in section 2, clause (*d*) and, therefore, seems to be wider than modern English law. The tendency in English law would seem to be to assimilate this principle by extending the definition of "executed consideration" and not to admit this as an exception to the well-settled rule that "past consideration is no consideration." However, it cannot be denied that the doctrine of *Lampleigh* v. *Brathwaite*[22], is a recognition that past service, if rendered at request, is good consideration for a subsequent promise. As Erle, C.J., observes in *Kennedy* v. *Brown*[25]. "The peculiarity of the decision lies in connecting a subsequent promise with a prior consideration after it had been executed". It is indeed an instance of prior or past executed consideration and we in India, not being averse to the recognition of past consideration, need have no extended definition of executed consideration to accommodate such past services and no hesitation to acknowledge that past consideration is good consideration in those circumstances.

To sum up, "past requested acts or abstinences are good consideration for a subsequent promise in our law."

(*b*) *Rendered without the request of the promisor.*—These can conveniently be called "past voluntary services" and will come under section 25, clause (2). The Act has recognised them to be good consideration only under very restricted circumstances and they will not always constitute good consideration for any subsequent promise. There are restrictions both as to the nature of the past services as well as the promise itself. To the extent past voluntary services are recognized as good consideration, Indian law has made a sharp departure from English law where they can under no circumstance constitute good consideration. It is, therefore, necessary to examine them in some detail.

(i) Past voluntary services will form good consideration if:

(*a*) they were rendered "voluntarily";

(*b*) they consist of something already "done";

(*c*) they were done by the promisee;

---

22. (1614) Hobart, 195; see also *Wilkinson* v. *Olivera*, (1835) 1 Bing. N.C. 490; *Stewart* v. *Casey*, L.R. (1892) 1 Ch. 115.

23. Cheshire & Fifoot, Law of Contracts, Ed. 3, pages 57-58.

24. Pollock on Contracts, Ed. 13, page 143: "It is still not quite settled whether a past benefit in any case is a good consideration for a subsequent promise. On our modern principles it should not be, and it is admitted that it is generally not. It is said, however, that past services rendered on request, no definite promise of reward being made at the time, are a good consideration for a subsequent express promise in which the reward is for the first time defined. But there is no satisfactory modern instance of this doctrine and it would perhaps now be held that the subsequent promise is only evidence of what the parties thought the service worth".

25. (1863) 13 C.B.N.S. 677.

(*d*) they were done "for the promisor" or they were what the "promisor was legally compellable to do."

(ii) They will constitute good consideration only for a "promise to compensate" for such services.

It is not every past act or abstinence and any subsequent promise which will fall under section 25, clause (2) and the case of *Raja of Venkatagiri* v. *Raja Rao Sri Krishnayya*[26], is a striking illustration of the same. It will be necessary to examine here the conditions which the past service and the promise must satisfy to fall within its ambit.

(i) (*a*):—*The services should have been rendered "voluntarily"*.—The term "voluntarily" is not defined in the Act and on a comparison of section 25, clause (2) with section 2, clause (*d*) would appear to be the antithesis of "at the desire of the promisor." To this must be added the *ratio decidendi* in *Raja of Venkatagiri's case*[26] referred to before and "voluntary" must be understood to signify "without the desire or request of the promisor and without the person rendering the service being under an obligation to do so." In that case the promisee had advanced moneys, there being no intention of claiming repayment, to the promisor for defending certain litigation, not at the desire of the promisor, but in purusance of a binding agreement which the promisee's grandfather had entered into with the father of the promisor. The Privy Council held that the advancement of the moneys was not "voluntary." The test adopted by the Privy Council in determining whether the act was voluntary or not is not clear[27]. It is, however, submitted that the word should not be so narrowly construed as to limit it to acts done *suo moto* but must be understood to mean all acts done by the promisee without the request of the promisor and without the promissee himself being under an obligation to do the act either by virtue of the law or any binding contract with any person. To hold that only an act done by a person of his own accord will be a voluntary act will lead to anomalous consequences. For instance, if a doctor attends on an unconscious patient at the request of a neighbour of the patient, who himself does not intend to pay for the doctor's services but expects the patient to do so after recovery and later the patient makes such a promise to pay the doctor, it will be illogical to contend that the doctor cannot enforce the promise as he did not act of his own accord but at the desire of a third party. It would be to penalise the doctor for acting at the request of a third party.

Where the services are rendered at the desire of the promisor, they will constitute good consideration under section 2 (*d*) and it is not necessary to debate the question whether they can even in that case be considered "voluntary" within the meaning of section 25 (2)[28].

(i) (*b*) : *The services must consist of something already "done"*.—Section 2 clause (*d*) uses the words "do" and "abstain" in rhetorical symmetry throughout, while section 25, clause (2) only reads : "It is a promise to compensate wholly or in part, a person who has already voluntarily done something" and does not read "a person who has already voluntarily done or abstained from doing something." This omission may be accidental and has not been judicially considered. It will be illogical to hold that past voluntary act may be good consideration but not a past voluntary forbearance. However, the scope of these words is not yet clear.

(i) (*c*): "*They were done by the promisee.*".—Under section 25, clause (2) it is absolutely necessary that the past service ought to have been rendered by the promisee himself and not a third party and the promise is to compensate him (the promisee) for such service. It is, therefore, obvious that while consideration for a promise may under section 2, clause (*d*) proceed from the promisee or any other person, the consideration for a promise to compensate under section 25, clause (2) should

---

26. I.L.R. (1949) Mad. 300 : (1948) 2 M.L.J. 260 (P.C.).

27. *Durga Prasad* v. *Baldeo,* I.L.R. 3 All. 221, is also not helpful in this respect as there, it was held that the act was not done "for the promisor". See *f.n.* 29 *post*.

28. *See* Mukerji, J.'s dissenting judgment in *Suraj Narain Dube* v. *Sukhu Aheer,* 112 I.C. 159 (F.B.).

have proceeded from the promisee only and not a third party. While the Act accepts the principle that a third party to a consideration can sue, it does not extend it to cases of past voluntary service. This is an important restriction on the scope of the applicability of section 25, clause (2). It is also clear that no one can be compensated for what he has not himself done. Thus if *A* did a voluntary service for *B* for which *B* promises to pay *C* a sum of money, *C* cannot enforce the promise at all.

(i) (*d*) : *The past voluntary service must have been done for the promisor*".—The definition of consideration in section 2 (*d*) does not require that the act or abstinence must be something done or suffered for the promisor and they may have been rendered for a third party. But a past voluntary act ought to have been done for the promisor and if it had been rendered for a third party[29], or the promisee himself, they cannot form good consideration under that clause. Thus if a tenant voluntarily and unauthorisedly effects improvements to the house of his landlord, not for the benefit of the landlord but for his own comfort and convenience, a subsequent promise by the landlord, it would appear, will not fall within section 25 clause (2). To quote an illustration form the American authority, Corbin on Contracts, "Suppose that Samaritan feeds and clothes needy stranger. Later Generous Observer promises to reimburse Samaritan. There are no cases indicating that Observer will be bound by his promise.[30]"

The past voluntary act may consist of some act which the promisor was "legally compellable to do." This again is a departure from the English law as it now exists. In English law, it was once thought "that the voluntary doing by one party of something which the other was legally bound to do is a good consideration for a subsequent promise of recompense".[31] Anson on Contracts, referring to them says : "We find it laid down that 'where the plaintiff voluntarily does whereunto the defendant was legally compellable, and the defendant afterwards, in consideration thereof expressly promises', he will be bound upon such a promise. But it is submitted that the authority for this rule wholly fails, in so far as it rests on the cases which are habitually cited in support of it[32]". It is obvious that this part of section 25, clause (2) proceeds on a footing which is no longer accepted by the English law. Therefore, to that extent again the Indian law varies from the English law, though it is not easy to comprehend the scope of the clause in this respect.

(ii) The promise must be " to compensate" the person who had rendered the voluntary services : It is not every kind of promise that will be enforceable by virtue of the second clause of section 25. The promise must be one to compensate and this is an important restriction as to the applicability of that clause. It would even appear to be from the *Raja of Venkatagiri's case*[33] that the intention of the promisor in making the promise should be to compensate the promisee and that it would not be sufficient if the promise had the effect of making such compensation. Compensation would imply that the value of the promise must be reasonably commensurate with the service rendered and, though the law is not ordinarily concerned with adequacy of consideration, the Court is bound to inquire into the nature of the promise to find out the intention with which it was made. If the promisor promises to pay an amount out of all proportions to the services rendered so that no reasonable person would regard it as a compensation for the services rendered, it is submitted, the promise will not be enforceable by virtue of the provisions of section 25 (2).

It is submitted that the promise must also be such that the promisor could have validly made it when the services were voluntarily rendered. There is conflict of views, not only between the various High Courts but also between the decisions of

---

29. See *Durga Prasad* v. *Baldeo*, 3 All. 221 where the voluntary act was not done " for the promisor ".

30. Corbin on Contracts, section 234, page 769.

31. Pollock on Contracts, Ed. 13 : see pages 143 144.

32. Anson on Contracts, Ed. 20, page 110.

33. I.L.R. (1949) Mad. 300 (309) : (1948) 2 M.L.J. 260 (P.C.), also see *Abdullakhan* v. *Purshottam*, I L.R. (1947) Bom. 807.

the same High Court[34] on this question. Though it is not possible to examine the decisions in this note, it is submitted that to hold differently would conflict with the well-established principles of our law regarding agreements by persons incompetent to contract. They are by section 11 a nullity and incapable of ratification after the incompetency has ceased to exist. A liability which in contemplation of law never could exist cannot constitute good consideration for a new promise. If a minor for whom services are rendered at his request under an agreement entered into during his infancy, and consequently void, cannot ratify such agreement after attaining majority, it will be strange that he could bind himself after majority to compensate for them if they had been rendered voluntarily. If so, persons supplying goods, other than necessaries, to minors would do well to supply them voluntarily and stand a chance of recovering compensation, but should never do so at the request of the minors for then a promise made by them after attaining majority to pay for them cannot be enforced at all.

III. TIME-BARRED DEBT.—Section 25, clause (3) provides that promise to pay a time-barred debt, wholly or in part, is enforceable subject to its being in writing and signed by the person to be charged therewith. The consideration for such a promise is definitely the past unenforceable debt. Even in English law which rigidly shuts out past consideration such promises are enforceable and about them Pollock observes : "It is said that the legal remedy is lost but the debt is not destroyed, and the debt subsisting in this dormant condition is a good consideration for a new promise to pay it. This is not logically satisfying, and in fact it belongs to the now discredited view of past consideration. There is no real equivalent for the new promise, and the only motive that can generally be assigned for it is the feeling that it would be morally wrong not to pay"[35]. Under section 25, clause (3) what is enforceable is the new promise and not the original debt and the consideration for the promise is indeed past.

CONCLUSION.

It is unsafe, therefore, to enunciate as a proposition of our law either that "past consideration is good consideration" or that "past consideration is no consideration."

1. Past gratuitous act or abstinence cannot constitute good consideration for a promise, irrespective of whether the act or abstinence was done or suffered at the desire of the promisor.

2. Past act or abstinence done or suffered at the desire of the promisor, is good consideration for a subsequent promise.

3. Past voluntary act will constitute good consideration for a promise to compensate for such act, provided the act and the promise fall within section 25 (2), but not otherwise.

4. Past time-barred debt is good consideration for a promise to pay the debt, if the promise complies with section 25 (3)[36].

---

34. A promise by a person to compensate another for services rendered during his minority, have been held to be outside the scope of section 25, clause (2) in the following decisions: *Arumugam* v. *Duraisingha*, I.L.R. 37 Mad. 38: 21 M.L.J. 1077 ; *Indran Ramaswami* v. *Anthappar Chettiar*, 16 M.L.J. 422 ; *Bindeshri Bux Singh* v. *Chandika Prasad*, I.L.R. 49 All. 137 ; *Suraj Narain Dube* v. *Sukhu Aheer*, I.L.R. 51 All. 164 (F.B.): See also A.I.R. 1919 Lah. 19 and 228 ; A.I.R. 1935 Lah. 561 ; A.I.R. 1938 Lah. 159 ; A.I.R. 1934 Pesh. 123 ; A.I.R. 1919 Cal. 875 ; Decisions to the contrary: See *Karam Chand* v. *Basant Kumar*, 11 I.C. 321 ; *Sindha* v. *Abraham*, I.L.R. 20 Bom. 775, also 11 C.W.N. 135 ; A.I.R. 1921 Lah. 205 ; I.L.R. 46 All. 568.

35. Pollock on Contracts, Ed. 13, page 144.

36. It may be argued that section 25, clauses (1), (2) and (3) are exceptions to the requirement of consideration and, therefore, are *nuda pacta*. Such an argument, though plausible, is technical The promise in clause (1) is enforceable only if it is made out of natural love and affection, etc., in clause (2) enforceable only if it is made to compensate a past voluntary act and in clause (3) only if it is to pay a time-barred debt. The Act might be said to have treated these as good consideration under certain circumstances even though they do not fall within the definition of consideration in section 2, clause (*d*).

OFFENCES AGAINST RELIGION

(A Critical Review of *Ramji Lal Modi* v. *State of U.P*)

By

D. C. Pande, *Lecturer in Law, Lucknow University.*

The Supreme Court decision in *Ramji Lal Modi* v. *State of U. P.*[1], will be applauded by the people of India, who solemnly resolved. . . to secure to all its citizens, *inter alia*, liberty of. . . belief, faith, and worship[2]. The above decision upheld the constitutional validity of section 295-A, Indian Penal Code, which seeks to punish deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs.

The right to freedom of religion is a fundamental right and is contained in Part III of the Constitution, which gives it a secular character. A noticeable feature of the Indian body politic is that it comprises of classes of persons of diverse faith and beliefs. While the interests of a secular state entitle all persons to the right to profess, practice and propagate their religion freely, it is also not inconceivable that exercise of this right together with the right of free speech and expression may at times lead to a situation of communal frenzy in the hands of enthusiastic zealots of differing faith. Communalism thrives on scandalizing religion or religious belief of others. A legislation therefore, of the kind of section 295-A, Indian Penal Code is obviously meant to check such a situation. That section 295-A, Indian Penal Code, is constitutionally valid, tends to show that in India secularism has a fair chance to triumph over sordid communalism.

It is to be noted that section 295-A is contained in Chapter XV of the Indian Penal Code, which deals with offences against religion. The chapter, initially, contained four sections dealing with three principal offences, *viz.*, defiling or trespassing sanctuaries[3], causing disturbances in religious worship[4] and wounding of religious feelings[5]. Later section 295-A of the Penal Code was added to it by an amending Act *viz.*, Act XXV of 1927. The said legislation was enacted after the Mohammedans had set up a violent agitation following the abortive prosecution in *Rajpal's case*[6], (also known as *Rangila Rasul's* case). It introduced specific offence in the nature of wounding religious feelings of a class.

The principle which guided the Law Commissioners in framing this part of the Code is that " every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another ". The Commissioners stated further that " the religion may be false, but the pain which such insults may give to the professors of that religion is real. . . It is often. . . as real a pain and as acute a pain as is caused by almost any offence against the person, against property or against character. Nor is there any compensatory good whatso ever to be set off against this pain. Such insults, when directed against erroneous opinion, seldom have any other effect than to fix those opinions deeper and to give a character of peculiar ferocity to the theological dissension ; instead of eliciting truth they only inflame fanacticism "[7].

All these considerations apply with peculiar force to India. The Law Commissioners by making provisions for offences relating to religion expressedly recognised the peculiar prejudices and predilections of the Indian people. The principle that underlay these provisions is the preservation of spiritual comfort of the individual or the class of individuals. An interference with such comfort was to be visited with punishment in order to mitigate pain.

---

1. (1957) S.C.J. 522 : (1957) 2 M.L.J. (S.C.) 65 : (1957) 2 An.W.R. (S.C.) 65: (1957) M.L.J. (Crl.) 771 (S.C.).
2. *Preamble* to Constitution of India (1950).
3. *Sections* 295, 297, Indian Penal Code.
4. *Section* 296, Indian Penal Code.
5. *Section* 298, Indian Penal Code.
6. 28 Cr.L.J. 721.
7. *Note J.*

It is to be noted that the Penal Code was constituted by four Law Commissioners of whom Lord Macaulay was the chief. Lord Macaulay was a staunch Benthamite. As the first law member of Council, " his whole project of judicial reform shows the profound influence of Bentham's legislative principles. He follows Bentham's principles so faithfully, indeed, that Sir Leslie Stephen considers Macaulay's Penal Code to be the first actual attempt to carry out Bentham's favourite schemes under British rule. He had the power and gift of persuasion to put Bentham's philosophy into practice "[8]. As a Law Commissioner who was entrusted with the responsibility of drafting the Penal Code we find Bentham's influence at various places in the elaborately drafted Penal Code which subsequently became the law. It was the principle of utility with its ultimate goal of human happiness which exhibited itself brightly in this part of the Code as well. By punishing deliberate insults to mere prejudices and predilections the Commissioners extended the scope of criminal law to acts which otherwise caused subjective harm like spiritual discomfiture. True, it is, that ferocity is incidental to theological dissensions and if aggravated may at times disturb public tranquillity. Nevertheless, the peculiar nature of these offences, as envisaged by the Law Commissioners indicate that the *primum mobile* of these measures have been the enigma of morals rather than the maintenance of public tranquillity for which provisions exist in the Code elsewhere.

The above perusal makes it abundantly clear that offences against religion in the Penal Code were enacted in the background of morals. In order to appreciate them fully a brief discussion on morality is therefore necessary.

Morality is a relative term. Morals as generally understood, stand in contradistinction to voluptuous notions. Anything which has tendency to inflame lust, deprave and corrupt the mind is immoral[9]. Indeed sensuous acts are opposed to morals because they are not deemed to be good. Morals are incapable of exhaustive definition. Usually they pertain to such techniques, patterns or standards of conduct which are underlined with an assumption or belief of being " good " or "right" or both. The expressions ' good ' or ' right ' are themselves ambiguous, yet they are intelligible in particular context of time and environment. Every society has a collection of morals. In other words each society prescribes from time to time, such patterns or standards of conduct which are deemed as good or right. The boundaries between the two are often mobile. A conduct is good if in turn it brings about a desirable result for the good of society or of the invidividual. Likewise, a conduct is right if it transcends the human frailities and conforms to some nobler ideas. Thus the legislative prescription of patterns or standards of conduct, which forbear causing of pain or spiritual discomfort to the professors of a faith are good because in turn they bring about spiritual comfort to person or persons collectively and have a harmonising effect on members of the society. These patterns are right in as much as they transcend the human frailities of intolerance towards the doctrines and dogmas of others.

Thus, we may sum up that morals contemplate the observance of such techniques, patterns or standards of conduct which either bring about desirable results for the good of society or of the individual or transcend the human frailities thereby conforming to some ethical principles. Therefore, any act which tends to transgress such conduct can be impinged by a legislative enactment as a measure required in the interests of morals.

Now we advert to the case of *Ramji Lal Modi* v. *State of U. P.*[10], decided by the Supreme Court. The case came up before the Court by way of petition under Article 32 of the Constitution of India. The petitioner had sought to challenge the constitutional validity of section 295-A, Indian Penal Code, as interfering with his right to freedom of speech and expression as guaranteed to him under Article 19 (1)

---

8. Dharkar—Legislative Minutes of Lord Macaulay.

9. See *Rex* v. *Hicklin*, (1868) 3 Q.B. Cases, 360.

10. (1957) S.C.J. 522 : (1957) 2 M.L.J. (S.C.) 65 : (1957) 2 An.W.R. (S.C.) 65 : (1957) M.L.J. (Crl.) 771 (S.C.).

of the Constitution and not saved by any of the restrictions mentioned in Article 19 (2)[11]. The learned counsel for the petitioner proceeded with an assumption that "the interest of public order" is the only thing in clause (2) of Article 19 which may possibly be relied upon by the State as affording a justification for its claim for the validity of the impugned section. He pointed out that insulting the religion or religious beliefs of a class of citizens of India may not lead to public disorder in all cases although it may do so in some. Therefore, where a law purports to authorise the imposition of restriction on the exercise of the fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right, the Court should not uphold it even in so far as it may be applied within the constitutionally permissible limits, as it is not severable. The learned counsel further contended that so long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void.

In order to determine the constitutional validity of section 295-A, Indian Penal Code, the Court considered the question, *viz.*, "whether the impugned section can properly be said to be the law imposing reasonable restrictions on the exercise of the fundamental right to freedom of speech and expression in the interest of public order" and answered the question affirmatively. The Court observed :

(*i*) that the section punishes only those aggravated forms of insult to religion or religious beliefs of a class which are perpetrated with the deliberate and malicious intentions and have a calculated tendency to disrupt public order.

(*ii*) next, having regard to the ingredients of the offence created by the impugned section it can properly be said to be a law imposing reasonable restrictions on the exercise of fundamental right to freedom of speech and expression in the interests of public order.

It is, however, respectfully submitted that the Supreme Court in the said case reached a right decision with a wrong approach. In order to sustain the constitutionality of the impugned section the Court plodded over a brittle reasoning which is manifestly clear in the propositions arrived above by the Supreme Court. We shall now examine, *ad seriatim*, each of these propositions critically.

The Supreme Court observed that section 295-A of the Penal Code contemplates to punish only those aggravated forms of malicious and deliberate acts which have a calculated tendency to disrupt public order. It is submitted that such a conclusion is neither borne out by the words of the section nor does this fall in line with cases decided earlier by various Courts.

Section 295-A of the Indian Penal Code reads as follows :—

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words either spoken or written or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished. . . . . ."

It is to be noted that the section nowhere refers to 'disruption of public order' as a constitutive element of the offence. A brief discussion of a few decided cases will be useful in understanding the meaning and scope of the section.

As stated above the necessity of introducing section 295-A in the Penal Code was actuated by the decision of Lahore High Court in *Rajpal's case*[12]. The section was the direct outcome of the abortive prosecution of one Rajpal who had published a pamphlet called the "Rangila Rasul" or the "Amorous Prophet" in which he described the incontinence of Prophet Mohammed. Rajpal was

---

11. Article 19 reads as follows : "All citizens shall have the right—

(1) (*a*) to freedom of speech and expression........(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law, imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, dermation or incitement to an offence"

12. 28 Cr. L.J. 721.

tried under section 153-A, Indian Penal Code. The trial Court found him guilty for having made " a wanton attack upon the Prophet of Islam, to hold him up to ridicule and contempt, to ridicule his religion and thus to wound the feelings of his followers"[13]. The conviction and sentence was upheld by the Sessions Judge on appeal. A revision application was then filed by the petitioner Rajpal which was allowed by the High Court of Lahore. The Court held that section 153-A of the Penal Code was " not meant to stop polemics against deceased religious leaders, however scurrilous and in bad taste such attacks might be "[14]. The Court, however, visualised the lacunae in law and realised that the interference with religious feelings, as it was in this case, could have come within the tenor of provisions relating to preservation of religious sentiments and beliefs, but it could not be done so because of absence of an express provision. His Lordship, therefore, suggested :

" that a clause might well have been added to section 297 by which the publication of pamphlets published with the intention of wounding the religious feelings of any person or of insulting the religion of any person might be made criminal "[15].

The decision in the above case pointed out the lacunæ and yielded a violent agitation by Mohammedans with a view to remove the defect in law, which cumulatively resulted in the addition of section 295-A in the Code.

The decision in *Rajpal's case*[13] is important in so far as it pointed out the necessity of adding a section for purposes of protecting the religious sentiments from being wounded ensuring thereby spiritual comfort to the people. The decision nowhere indicated the necessity of adding such a clause for preserving public order.

Another illustrative case on the point is *The King* v. *Shwe Hpi*[16], decided by the Rangoon High Court. The facts of the case disclose that the acts of the respondent Shwe Hpi and others did not result into any disruption of public order, though they were held liable under section 295-A of the Penal Code. In this case the respondents had caused a book to be printed attacking Buddhist religion in most intemperate and provocative language. The publication and distribution of the book did not cause any resentment or disturbance for seven years when prosecution was launched. But the Court viewed that acts of the respondents brought themselves within the reach of criminal law and punished them under section 295-A, Indian Penal Code. Explaining the scope of the section the Court stated that " if the words used were bound to be regarded by any reasonable man as grossly offensive and provacative and were maliciously intended to be regarded as such then an offence would have been committed "[17]. This decision clearly amplified that it is the wounding of religious feelings, (not necessarily followed by public disorder) which is punishable under this section.

Similar is the view held by Mootham, C.J., in *Harnamdas* v. *State of U. P.* [18]. He observed that under section 295-A, Indian Penal Code, " the expressions used should be such as are not bound to be regarded by any reasonable man as grossly offensive and provocative maliciously and deliberately intended to outrage the feelings of any class of citizens "[19]. The malicious outraging of religious feelings was thus taken to be the crux of the offence in this case too.

Even *Ramjilal Modi's case*[20] shows that the facts which brought conviction to the petitioner under section 295-A were not of such an aggravated nature as to have

---

13. 28 Cr. L.J. 721.
14. 28 Cr. L.J. 721 (722).
15. 28 Cr. L.J. 721, 722-723.
16. I.L.R. (1939) Rang. 302.
17. I.L.R. (1939) Rang. 302 (306-7).
18. A.I.R. 1957 All. 538.
19. A.I.R. 1957 All. 538 (540).
20. (1957) S.C.J. 522 : (1957) 2 M.L.J. (S.C.) 65 : (1957) M.L.J. (Crl.) 771 : (1957) 2 An.W.R. (S.C.) 65 (S.C.).

a calculated tendency to disrupt public order. The punishments on the accused Modi, therefore, rested simply on the acts which were outrageous of religious feelings and beliefs of Mohammedans.

A survey of the statute law as well as earlier case-law sufficiently establishes that under section 295-A, Indian Penal Code, the malicious outrage of religious belief or sentiment has been the accepted gist of offence in this country so far. Never before the question of disrupting the public order was thought to be an ingredient of the offence. Thus we find that the introduction of the ingredient of "public disorder" or "disruption of public order", is an innovation of the Supreme Court. Obviously this is the result of brittle reasoning that the Court employed in the said case, merely because the Court endeavoured to sustain the constitutionality of the impugned legislation on the ground of 'public order'. The occasion for such an innovation would have not arisen had the Court tried to find out the purpose of the legislation by looking into the Report of the Law Commissioners. It has been the practice of the Indian Courts to refer to the Reports of the Indian Law Commission in construing the provisions of the Indian Penal Code with a view to ascertain the intent and purpose of the Legislature. In *Bhima Shaw* v. *The State*[21], Narasimham, J., of the Orissa High Court observed that "there is sufficient authority for the view that in construing the provisions of the Indian Penal Code and ascertaining the intention of the Legislature the report of the Indian Law Commissioners may be referred to"[22].

As has already been said above, Chapter XV of Indian Penal Code was contemplated by the Law Commissioners to be enacted in the background of morals. Thus the correct view for the Supreme Court to take in the case would have been to state that section 295-A of the Penal Code imposes reasonable restriction on the exercise of fundamental right of free speech and expression and is well saved by the permissible restrictive clause in Article 19 (2) as being in the interest of morals. By doing so the Court would have avoided the import of an extraneous ingredient of 'disruption of public order' which *prima facie* is absent in the section. It may be stated that in interpreting the scope of the section the Court inadvertently took the ostensible situation into account which is generally appended with such events as are related to the interference of religious sentiments. Moreover, it is convenient for the Courts to depend on the ground of 'public order' in Article 19 (2) in order to examine the constitutionality of the section even if the question of public order is incidentally connected. In other words, if section 295-A, Indian Penal Code, is to take into account only such malicious acts which have a calculated tendency to disrupt public order, it will then mean that all other acts which otherwise disturb the religious sentiments and beliefs are not punishable. This in effect would result in defeating the very intention of the legislature. Furthermore, an extensive use and application of the term 'public order' is apt to make the expression an unruly horse. It is, however, submitted that a deeper probe of this provision of the Penal Code would have led the Court to hold that the impugned section is a reasonable restriction on the right of free speech and expression as being in the interest of morals without narrowing down the scope of section 295-A. Thus a right decision could be well arrived at by a right approach.

---

21. A.I.R. 1956 Orissa 177—(I.L.R. 14 Cal. 721 and I.L.R. 17 Cal. 852, followed.)
22. A.I.R. 1956 Orissa 177 (180).

ON ANCIENT AND PRESENT LEGAL SYSTEMS OF CHINA.

By

S. VARADARAJULU NAIDU, B.A., B.L.,

District and Sessions Judge, Ramanathapuram, at Madurai.

Of the ancient legal systems of the world, that of the land of the Nile, is the earliest ; next comes that of the land of the Euphrates and the Tigris ; and the third in the march of time is that of the land of the Yellow River. It is the Chinese system that is even now a living fabric, while the Egyptian and the Mesopotamian systems lie buried under the rubbles of time.

Even in China, by the adoption of the Constitution of the Peoples Republic of September 20, 1954, the institutional aspect of the traditional Chinese legal system has had a metamorphosis. In fact, the tree of the change was planted even in 1911, when the throne of the Emperor of the Manchu dynasty fell, and in 1912, when was ushered forth a Republic. The personal type of dispensation of justice by the local Mandarin, the Provincial Governor, and the Imperial Emperor at Peking was substituted by the Constitution of 1954 by the "Peoples Courts". As per Article 73 of that Constitution, the highest judicial authority is the "Supreme Peoples Court." The next in the hierarchy is the " Local Peoples Courts ", as well as the "Special Peoples Courts." The President of each of these three sets of Courts has a term of four years. The Courts are independent, subject only to the law. However, the Supreme Peoples Court is responsible to the " National Peoples Congress ", which is the sovereign assembly of the people, in whom powers of every kind are vested, as the supreme organ of the people of China, as per Article 2 of their Constitution. Article 75 declares that the system of peoples' assessors applies in accordance with the law to the judicial proceedings in the Peoples Courts.

The jurisprudence to which these courts pay homage is fundamentally that of Confucius, one of the world's wisest men, who was a Chief Justice of China about B.C. 500. The general philosophy of life that underlies the Chinese system of law and justice is epitomised in one of the saying of Confucius : "As a Judge," he said, "I decide disputes, for that is my duty ; but the best thing that could happen would be to eliminate the causes of litigation." The almost religious respect for positive law that marks most western systems of law of the present day and of India, does not exist in China. Even today, the Chinese legal system depends upon the wisdom and the discretion of the peoples' assessors, rather than on the texts of the laws. This system has its own advantages, at any rate, the advantage of quick dispensation of justice, unlike the western product, which by its vulnerability to subtlety and by its fences of rules of procedure contributes to a great extent to the delayed justice.

It should not, however, be understood that there was no positive law in the old China. Only the Chinese did not worship at its altar in the same way as the votaries of the western systems of the present-day do. About B. C. 1200, the earliest code that of Chow, was composed by Tan, the Duke of Chow. At Peking, the Emperor, sitting as the Supreme Court was assisted by men learned in law, who reviewed the rulings of the lower Courts, as a Court of appeal and as a Court of revision. From time to time, collections of the leading decisions of the Supreme Court were published and studied as precedents ; and each judicial officer was provided with a copy of it. The trial Magistrate of the Old China had developed a high degree of professional skill with a combination of intuition and experience in discriminating, without the aid of a system of formal proof like our Evidence Act, between guilt and innocence, like, Solomon, who adjudged aright between the true mother and the false mother, who both claimed to be the mothers of one and the same baby.

Even the present Peoples Courts are stated to be manned and presided over by usually right men and women, and are stated to assure to the nation justice of the English equity pattern, though not of the strictly legal one, even as the old Mandarins, Magistrates, Governors, and Emperors did before. What fault can there be in continuing to be governed by the fudamental principles of a legal system that carried their nation successfully on its bosom through a period of more than 3000 years !

Indeed the Chinese legal system, which works well for China's 500,000,000 inhabitants, is worthy of study by all, who are keen on the introduction, in their own country, of a system of quick, simple, and cheap justice.

STAMP DUTIES AND STATE LEGISLATION

By

K. KRISHNAMURTHI, *Retd. Asst. Registrar, High Court, Madras.*

Under the Constitution, rates of stamp duties on certain documents (bills of of exchange, promissory notes, etc., being instruments of a commercial character) are reserved exclusively for Central legislation with a view to secure uniformity all over India. Rates of stamp duties on other documents are reserved exclusively for State legislation. Collection and management of all stamp duties find a place in the Concurrent List. The entire revenue is assigned to the State in which the duties are collected and the entire management is vested in the revenue authorities of the State Governments. By Act XLIII of 1955, the Indian Stamp Act, 1899, has been extended to the whole of India including what were previously Part B States except Jammu and Kashmir. But by a Proviso to section 1 (2), it is enacted that it shall not apply to territories which were comprised in Part B States except to the extent to which the provisions of the Act relate to rates of stamp duty in respect of the documents specified in the Central Legislative List. That is, the Act applies to those territories only in regard to the rates of duties on certain documents and supersede the local Acts in force there only with regard to such rates. Though the Union Legislature could have made the Act applicable to those territories in regard to collection and management of these duties, it has not chosen to do so. The result is the provisions of the Act relating to collection and management are not applicable to territories which were comprised in Part B States, but the Acts in force in those territories continue to be applicable in regard to such matters.

As regards instruments other than those specified in the Union List, the Indian Stamp Act does not apply to the territories which were comprised in Part B States, both as to rates of duties and as to collection and management. The Union Legislature could have extended the Act to those territories as regards collection and management of those duties which is in the Concurrent List but it has not chosen to do so. The result is that the Acts in force in those areas are applicable in their entirety. One unexpected consequence of this position is that a document stamped according to the law in force in territories which were comprised in Part A States and Part C States would be chargeable over again with the whole duty prescribed by the local Act in force in territories which were comprised in Part B States if they relate to property situate or to any matter or thing done or to be done in those territories. It is suggested that pending proper legislation, the State Government concerned may, in the exercise of its power to remit or reduce duty, reduce the duty chargeable on such a document to the difference of duty, if any, between that actually paid on it and that chargeable on it under the local Act.

The position is not much different with regard to documents executed in a territory which was previously comprised in a Part B State and relating to a property situate in a territory which was previously comprised in a Part A State, *i.e.*, a territory to which the Indian Stamp Act applies in its entirety with its local amendments. The matter is governed by the language of the proviso to section 3 and section 19-A inserted in the main Act in various States by local amendments. Section 19-A added locally in the various States provides for the payment of difference if any in accordance with the rates in force in those States, in the case of instruments executed outside those States and brought into the said States. In Madras, section 19-A has been amended recently so as to make it applicable to an instrument executed in any part of India including a territory previously comprised in a Part B State[1]. But the Madras section as unamended is still in force

1. See Mad. Act XXV of 1957.

in a part of Andhra Pradesh State. This section had been previously adapted in 1950 specifically restricting its application to an instrument executed in a territory comprised in a Part A State or Part C State. Section 19-A inserted in Bihar, Bombay and Madhya Pradesh had been similarly adapted. Though there seems to be no specific adaptation made to section 19-A inserted in Bengal, Punjab and Uttar Pradesh, the reference to "British India" in the section has now to be read as reference to the territories which were comprised in Part A States and Part C States prior to 1st November, 1956, by virtue of clause 2 of the Adaptation of Laws Order, dated 26th January, 1950 and the States Reorganization Act. It may not be possible to read the words "British India" as "India" by reading the general adaptations made previously to the main Act into the local amendments and then applying Act XLIII of 1955 substituting the word "India" for the words "the States" in the main Act. These provisions do not seem to have been amended on the lines of Madras section 19-A. If the language of these provisions is strictly construed, the Proviso to section 3 added in the States will have the effect of making such instruments chargeable with full duty, prescribed by the Schedule of the local Acts without deduction of the duty already paid. This would be opposed to policy, and would be a great hardship. This apart, the provisions in section 18 which would have applied previously to documents executed in a Part B State is now restricted to documents executed out of India and its language cannot apply to such documents. It is therefore suggested that pending proper legislation and in order to avoid all difficulty and hardship the various State Governments may in exercise of the powers conferred by section 9 of the Act reduce with restrospective effect the duty in such cases to the difference, if any, between the duty payable under the Local Act and the duty already paid. Such a notification will be useful in Madras also regarding instruments which became chargeable under the Madras Act prior to Act XXV of 1957. But the best solution is to have a uniform provision all over India regarding this matter. It relates to collection and managment of stamp duties which is in the Concurrent List. A new section 19-A may be inserted in the main Act by the Union legislature providing for collection only of the difference in duty on an instrument executed in any part of India and stamped according to the law in force in that Part and later becoming chargeable to a higher duty under the law in force in any other part of India into which it may be brought.

In this connection reference may be made to another matter about which uniformity is desirable. At present there is variation as regards the classes of instruments which cannot be validated by payment of duty subsequent to execution (*vide* discussion at p. 235 of the M.L.J. Publication on the Indian Stamp Act, 1950 Edn.) There may be similar differences in the Acts in force in territories previously comprised in Part B States. These Acts are still in force by virtue of the Proviso to section 1 (2) of the Indian Stamp Act, 1899 inserted by Act XLIII of 1955 and section 8 of the said Act XLIII of 1955 repealing the Acts only in so far as they fixed rates of stamp duty in respect of the documents in the Union Legislative List. It is not desirable that a class of instruments should be capable of being validated on payment of duty in one part of India and not capable of being validated in another part of India. Clause (*c*) of the Proviso to section 32, Proviso (*a*) to section 35, and sections 40 and 41 may be amplified specifying by name the classes of instruments which cannot be stamped subsequently and made uniformly applicable all over India and the corresponding provisions of the local amendments got repealed. This subject is also within the field of Central Legislation because it pertains to collection and management of stamp duties and not to rates of stamp duties. The Proviso to section 1 (2) newly added may be suitably amended so as to make the Act applicable to the whole of India in regard to such matters and suitable repealing provision made in the amending Act. The Proviso may run somewhat thus :

"Provided that it shall not apply to the territories which immediately before the 1st November, 1956, were comprised in Part B States in so far as its provisions relate to rates of stamp duty in respect of documents other than those specified

in entry 91 of List I in the Seventh schedule to the Constitution, unless such provisions are extended with or without modification to such territories by the Legislature of the State concerned."

This would facilitate the evolving of a uniform Code for all India on all matters about which uniformity is desirable, with local amendments only as to rates of stamp duties on the documents in the State Legislative List, and the charging provisions as to those rates and some matters of procedure on which special local legislation is considered necessary and uniformity is not essential.

CONSTITUTIONAL PROVISIONS AS TO THE LAW OF CONTEMPT

By

V. G. RAMACHANDRAN, M.A., B.L., *New Delhi**

It is appropriate to examine if the inherent and statutory powers of Courts of record to punish for contempt of Court is in any way affected by the provisions of the Constitution of India.

The relevant provisions of the Constitution touching the law of contempt are Articles 19 (2), 129, 215 and 227.

Article 19 (2) provides " Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause : . . in relation to contempt of Court."

Note.—Clause (1) (*a*) refers to the Fundamental Right of Freedom of Speech and Expression.

Article 129 provides "The Supreme Court shall be a Court of record and shall have the powers of such a Court including the power to punish for contempt of itself."

Article 215 says " Every High Court shall be a Court of record and shall have the powers of such a Court including the power to punish for contempt of itself."

Article 227, runs thus " *Clause* (1).—Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

. . . . . .

Clause (2) (*b*).—" The High Court may make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts."

. . . . . .

Clause (4).—"Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces."

Comments.—The words in Article 19 (2) connote that the pre-existing law of contempt do continue to operate even after the Constitution of India came into force. The question may be posited, whether under Article 19 (2) reasonable restrictions could be imposed on the existing law of contempt. It was posited in *The State* v. *Editor*[1], that 'even assuming that the Constitution makes the existing law relating to contempt of Court, subject to reasonable restrictions of the exercise of Freedom of Speech the whole law contempt of Court as it stood on the date of the coming into force of the Constitution, answers the test of reasonableness 'that' the power to punish for contempt of Court is inherent in a Court of record and this

---

* Author of the *Law of Contempt of Court.*

1. A.I.R. 1955 Orissa 36 following A.I.R. 1952 S.C. 196 approving minority view of Frankfurter J. in (1941) 314 U.S. 252.

has been recognised from the earliest times in England. The High Courts in India were created Courts of records by several Letters Patent. By the Government of India Act, 1935, as well as Article 215 of the Constitution of India the Supreme Court of India and the High Courts are Courts of record and it is essential for the administration of justice and protection of individuals that the Courts should be able to punish summarily acts of contempt, because in the words of Blackstone " this power in inseparably attendant upon every superior Tribunal ".

In *Aswin Kumar* v. *Arabinda Bose*[2], the Supreme Court condemned newspapers which indulged in criticising the Supreme Court preaching to the latter not only a sermon of divine detachment from extraneous considerations such as politics and policies but also proceeded to attribute improper motives to the Judges that was clearly transgressing the limits of fair and *bona fide* criticisim and had a clear tendency of affecting the dignity and prestige of the Court, calling for action for a gross contempt under the powers recognised under Article 129. There need be no actual interference with the course of administration of justice but it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. *Hiralal Dixit* v. *The State of U. P.*[3] But such an extraordinary power must, however, be sparingly used. Where public interest demands the Court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adquate[3].

The High Courts are declared under Article 215 to retain their inherent powers to deal with contempt of Court. Speeechs or writings misrepresentating the proceedings of the Court so as to scandalize the Court, or any publication which tends to bring into disrespute the decision of the Court and impair the faith of the public in the administration of justice are undoubtedly cases of contempt. *Mehdi* v. *Frank Moras*[4]. Where there is a clear disobedience of an injunction order of Court, proceedings for contempt is quite proper. *Ramacharan* v. *Debi Dayal Durby*[5]. Whether a particular passage amounts to contempt by scandalizing the Court is a question to be closely scrutinized. For 'justice is not a cloistered virtue' and fair criticism of the law enunciated on the severity of the sentence or fine levied do help in moulding public opinion as to the need for reform of the law[5]. Indeed it is not by stifling criticism that confidence can be created. But when once the right of fair and reasonable criticism is conceded the dignity of expression cannot be strictly insisted in every case. *H. E. H. The Nizam* v. *B. G. Kher*[6].

Under Article 215 the High Court can continue to exercise its inherent powers to proceed for contempt as a Court of record. Section 1 (2), Criminal Procedure Code, expressly excludes special jurisdictions from its scope. Hence the Code of Criminal Procedure does not apply in matters triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. *Sukhdev Singh Sodhi* v. *Hon'ble J. S. Teja Singh*[7]. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself[7].

As the High Courts are not functioning under the Criminal Procedure Code but act in their special jurisdiction, the Supreme Court has no power under section 527, Criminal Procedure Code, to transfer such proceedings from the High Court to another[7]. The power to punish is stated in Article 215 and as this is not a fundamental right, Article 32 can have no application. In the same case[7], there is a very useful obiter which posits " It is desirable on general principles of justice that a Judge who has been personally attacked should not as far as possible hear a contempt matter which to that extent, concerns him personally. The judges should bear in mind the oft-quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who

2. (1953) S.C.J. 18 : A.I.R. 1953 S.C. 75.
3. A.I.R. 1954 S.C. 743 : 1954 S.C.J. 846.
4. A.I.R. 1954 Assam 201 (F.B.).
5. A.I.R. 1955 All. 483.
6. A.I.R. 1955 Hyd. 264.
7. A.I.R. 1954 S.C. 186 : 1954 S.C.J. 67.

should always be given as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case."

It will be seen that Article 215 vests in the High Court all the powers of a Court of Record including "the power to punish the contempt of itself". The latter phrase does not limit such powers of the High Court as it possesses as a Court of record or other powers with which it may be invested by law[7]. The power to commit for contempt of subordinate Courts has been expressly conferred by the Contempt of Courts Act. *Lakhan Singh* v. *Balbir Singh*[8] Hypersensitive use of the jurisdiction in contempt is not conducive to the achievement of the purpose for which it exists. Its effectiveness depends to a very great extent on the caution, wisdom and restraint with which it is used. *Mehdi* v. *Frank Mores*[9].

Where a Judge of the High Court is appointed the sole member of an industrial tribunal, he cannot claim to exercise the powers of a High Court Judge to punish persons for contempt of the Tribunal under Article 215. In re *Hayles, the Editor of "The Madras Mail"*[10]. For it is only contempt of the Tribunal and not contempt of the High Court.

The High Court has powers of superintendence over all subordinate Courts, inclusive of Special Tribunals. *Muhomed Raoof* v. *State*[11]. This power is also to be sparingly used and only in appropriate cases with a view to keep the subordinate Courts or tribunals within the bounds of authority, to see that they do what their duty enjoins and that they do it in a legal manner. *Tirath Singh* v. *Bachitor Singh*[12].

In its ultimate analysis contempt of Court is contempt of the authority of the sovereign State exercised through its Courts duly constituted for the administration of justice. It is open to Parliament of India which exercises the sovereign authority of the State over this portion of the legislative field to provide specifically for the exercise of the power of the sovereign State to punish contempts of any specified classes of Courts or Tribunals. Thus in the case of industrial Tribunals the State acting through Parliament has conferred power on the Industrial Tribunal and on the Labour Appellate Tribunal by section 30 of Act XLVIII of 1950 in respect of categories of contempt enumerated in sub-sections (1) and (2) of section 30. In this event the High Court should respect this statutory provision and not invoke its own inherent powers in this regard. While Article 227 which replaced section 15 of the High Courts Act, 1861, extended the power of superintendence of the High Court to tribunals also, Article 227 did not of itself vest in the High Court the power to punish contempt of subordinate Courts or tribunals. But the inherent power of the High Court to take action against contempt of subordinate Courts is left untouched by Article 227 even as section 15 of the High Courts Act left it untouched.

---

8. A.I.R. 1953 All. 342 (D.B.).
9. A.I.R. 1954 Assam 201 (F.B.).
10. (1955) 1 M.L.J. 375.
11. A.I.R. 1951 Hyd. 50 (F.B.).
12. A.I.R. 1954 Pepsu 118.

BOOK REVIEWS.

CENTRAL SALES TAX ACT—We have received the following publications on the recent Central Sales Tax Legislation :

(1) CENTRAL SALES TAX ACT, 1956, WITH COMMENTARIES, RULES AND NOTIFICATIONS by *B. L. Dalmia*, B.COM., LL.B., Advocate, High Court. (Published in four parts by Law Chamber, Law Book Publishers, 134, Mahatma Gandhi Road, Calcutta. Price Rs. 3.50 nP. per part.

(2) COMMENTARY ON THE CENTRAL SALES TAX ACT WITH RULES AND NOTIFICATIONS by *A.G. Roy*, M.A., B.L., Advocate and Assistant Editor, Patna Law Reporter. Published by Pahuja Bros., Law-Book Sellers and Publishers, Patna-3. Price Rs. 5.75 nP.

(3) CENTRAL SALES TAX ACT, 1956, by *R. V. Patel*. Published by M/s. N. M. Tripathi (Private) Ltd., Bombay-2. Price Rs. 12.

The recent Legislation of the Union Parliament on the subject of Sales Tax is intended to set at rest the great confusion and controversy that has been prevailing on the levy of Sales Tax by States on extra territorial sales. But this enactment in itself has raised several other controversies which have to be resolved in course of time. The Legislation is a taxation measure and the nature of the tax levy is such that it affects a vast number of members of the public both in the sphere of Commerce and outside it. No wonder therefore that a number of publications on this piece of Legislation has come into the market. All of them would be found very much in need. The publication by B. L. Dalmia is in four handy small parts. The notes are given under each section with reference to case-law as decided under several State Legislations on the subject in previous years. Part I consists of the Act with notes and Part II consists the rules framed by the Centre and the different States. Part III contains a list of exempted goods in several States and Part IV deals with the rates of Sales Tax. The get-up and the printing of the book is very good.

CENTRAL SALES TAX ACT, 1956, by *R. V. Patel*, is similar in nature with the Act and Rules. The commentaries on the main Act are analytical and exhaustive with an introductory chapter on the historical back ground and the scope of the Legislation.

The above three publications which have come out in the market are all quite useful. The problem of levy of sales-tax on inter-State trade has been brought to some uniformity by this Legislation. The actual administration of the Act however is left to the States and each of them have framed Rules in this regard. A comparative study of these would be of great assistance in solving the problems that would arise in the administration of the Act. We recommend the Publications for use by Assessees, Lawyers and the Department.

INJUNCTIONS AGAINST ULTRA VIRES ACTS OF COMPANIES

By

AVTAR SINGH, *Lecturer in Law, Lucknow University.*

A company is an incorporated individual with limited powers. The powers of a company are such and such only as the objects stated in its memorandum confer[1]. A company may, however, do all such acts which are either essential or reasonably and fairly incidental to the attainment of its objects[2]. But whatever is done by a company in excess of its corporate powers as defined by the memorandum, is treated by law as though it was not done at all[3]. It is said to be *ultra vires* of the company. In other words, memorandum determines the scope of powers and the doctrine of *ultra vires* makes any act outside that scope as unlawful and void. Nevertheless companies have exhibited a universal tendency to escape from the prison in which the doctrine of *ultra vires* confines them. Hence very frequently *ultra vires* acts are committed. It is proposed here to examine the rights of members and creditors to restrain a company from committing *ultra vires* acts.

RIGHT OF MEMBERS.

That members are entitled to hold a registered company to its registered objects has been recognized long since[4]. Nothing is more desirable in the public interest as well as for the protection of members and creditors that activities of a company must be confined to such matters and things as are necessary to enable it to discharge the duties for which it has been incorporated. Hence the Courts will restrain incorporated bodies within the limits of their institution and an action for an injunction having that object will lie at the suit of one of the members.

The rights of a member to restrain a company from doing *ultra vires* acts was reaffirmed in *Jenkins* v. *Pharmaceutical Society of Great Britain*[5]. The defendant society was incorporated by Royal Charter in 1843 for the purpose of advancing chemistry and pharmacy and promoting a uniform system of education of those who should practise the same and also for the protection of those who carried on the business of chemists and druggists. The society undertook certain acts all of which would in effect convert the society into a Trade Union, a result which could not have been contemplated in 1843 when the charter was granted. Hence the acts were *ultra vires* of the society. The plaintiff, a registered member of the society, sued the society for an injunction. Peterson, J., held:

"In my opinion authorities[6] justify me in holding that if the society in the present case intends to do acts which are not authorized by its charter, a

---

1. Thomas v. Railroad Co., 101 U.S. 71.

2. A. G. v. Great Eastern Rly., Co., (1880) L.R. 5 A.C. 473.

3. The doctrine of *ultra vires* was explained by Lord Chancellor Cairns in *Ashbury Etc., Co.* v. *Riche*, L.R. 7 H.L. 653 at 699. He said: "The subscribers are to state the object for which the proposed company is to be established and that the existence, the coming into existence of the company, is to be an existence and to be a coming into existence for those objects and for those objects only."

4. *Attorney-General* v. *Great Eastern Rly., Co.*, 1879 L.R. 11 Ch. Div. 449, 503, per Lord Bramwell: "The public are entitled to hold a registered company to its registered business.". But that was said in reference to a public corporation, for, in case of a company registered under the Companies Acts only members are entitled to an injunction against *ultra vires* acts, and not the public.

5. L.R. (1921) 1 Ch. 392.

6. Following authorities were reviewed: *Ward* v. *Society of Attorneys*, 1 Coll. 370. *Bream* v. *Royal British Nurses' Association*, (1897) 2 Ch. 272. *Rendall* v. *Crystal Palace Co.*, 4 K. & J. 326.

member is entitled to ask for an injunction restraining the commission of acts which are outside the scope of the charter and which may result in forfeiture of the charter and the destruction of the society."

The foundation of the right is that the members join in a company on the faith that it shall not travel beyond the field of its corporate action. But before a member can exercise this right he must satisfy the following conditions.

Firstly, the plaintiff should be a registered member of the company. Whether persons having only equitable interest in shares, but not being registered shareholders, can sue to restrain a company from doing an *ultra vires* act, has not been decided. But, on principle, it appears that such a right need not be extended to them, for their interest in the company is not sufficient to warrant this important right of injunction.

Secondly, "a shareholder in a company who seeks to restrain the company from doing an *ultra vires* act must show by distinct and definite averments, the illegality of the act"[7]. Unless the act is shown to be distinctly *ultra vires*, the Court shall not listen to the plaintiff.

Thirdly, the plaintiff must sue the company in his proper capacity and interest as a shareholder[8] and he must not suffer from any personal disqualification. It is by no means clear what is meant by 'personal disqualification', but on that ground alone injunction was refused in the following two cases. One is *Forrest* v. *Manchester, etc., Rly. Co.*[9] The plaintiff filed a bill for injunction against the defendant company. The bill alleged that the company was running excursion boats to a place which was beyond the limits prescribed by its Act. Such excursion boats were prejudicial to the interest of a packet company in which the plaintiff was a large shareholder. He had no sympathy whatever with the interest of the defendant company. Protection of the packet company was his only motive for instituting the suit and he admitted that he was directed to institute the suit by the directors of the packet company who promised to indemnify him against costs. The Lord Chancellor did not even consider whether the acts impugned were within or beyond the powers of the company. He refused injunction on the simple ground of personal disqualification. The right to apply for an injunction is given to members for the protection of the company's interests. Every member must, therefore, exercise it *bona fide* for the benefit of the company. Was this suit filed *bona fide* for the benefit of the company? Far from that. The plaintiff was a puppet of the packet company.

The second case is that of *Robson* v. *Dodds*[10]. One Harle had a quarrel of several years standing with the directors of a society and he wanted to turn them out of the society. He, therefore, persuaded the plaintiff to purchase one share in the society and then got him to institute the suit against the directors to restrain them from borrowing money on behalf of the society on the ground that such borrowings were *ultra vires*. Malins V. C., said[11]:

"It (the suit) appears to be instituted.......... to wreak out the feelings of personal vengeance and anger............ The plaintiff is a mere puppet.

---

7. *Mills* v. *Northern Rly. of Buenos Ayres Co.*, (1870) L.R. 5 Ch. 621.
8. Pollock on Contracts, 12th Ed., page 554.
9. (1861) 4 D.L.J. 126 : 45 E.R. 554.
10. (1869) 8 Eq. 301.
11. *Ibid.*, at p. 307.

in the hands of Harle. This suit is not a *bona fide* one, faithfully, truthfully and sincerely directed to the interest of shareholders."

Hence the injunction was refused.

But if the plaintiff has any real interest and is proceeding at his own risk, he is not disqualified from suing by the fact that he has collateral motives, or is acting on the suggestion of strangers or enemies of the company, or even has acquired his interest for the very purpose of instituting the suit. In *Colman* v. *Eastern Rly. Co.*[12], the directors, for the purpose of increasing the traffic, proposed to do certain acts which, the Court found, were not within the powers of the company. The plaintiff filed a bill for injunction. It appeared that he was suing at the instigation of another rival company. *Held,* that this circumstance was not itself, sufficient to prevent him from obtaining an injunction on the merits of his case. Similarly in *Bloxam* v. *Metropolitan Rly. Co.*[13], the plaintiff bought his shares a short time before he filed a bill for an injunction. He bought the shares for the very purpose of instituting the suit. Lord Chelmsford, L.C., held that he was not prevented from obtaining an injunction. The question in all cases is:

"Is the suit *bona fide* the plaintiff's own suit, or is he merely the hand by which some one else acts?"

If he has real interest and acts *bona fide* there is nothing to prevent him from getting an injunction.

If the plaintiff satisfies these conditions the small interest of the plaintiff will be no objection to his suit as the suit is always filed on behalf of himself and all other shareholders.[14] But it is not always necessary that the plaintiff should sue on behalf of himself and all other shareholders of the company. In *Hoole* v. *Great Western Rly., Co.*[15], the company had drawn a scheme for the issue of shares in lieu of dividends. A shareholder filed his bill on behalf of himself and that class of the shareholders to which he belonged. It was held that the scheme was *ultra vires* and that an individual member of a corporation may maintain a suit in his own name without suing on behalf of other persons to restrain the corporation from doing an act which is *ultra vires* of the corporation.

THE RIGHT OF CREDITORS.

Are the creditors of a company entitled to restrain it from doing an *ultra vires* act? There are two leading cases on the point. One is *Mills* v. *Northern Rly. Co.*[16], of Buenos Ayres and the other *Lawrence* v. *West Somerset Mineral Rly. Co.*[17]. In both these cases it has been held that a simple contract creditor cannot get an injunction to restrain the company from dealing with their assets as they please on the ground that they are diminishing the sums for the payment of his debt or on the ground that such acts are *ultra vires* of the company. A similar statement of law appears in Halsbury's Laws of England[18].

This state of law is hardly satisfactory. *Ultra vires* doctrine was one consequence of the introduction of limited liability. The true purpose of the doctrine was to maintain the capital of the company for the benefit not only of

12. 76 R.R. 78.
13. (1868) L.R. 3 Ch. 337.
14. *Seaton* v. *Grant,* L.R. (1867) 2 Ch. App. 459, where it was held that small interest of the plaintiff was no defence.
15. (1867) L.R. 3 Ch. 262.
16. (1870) L.R. 5 Ch. 621.
17. (1918) L.R. 2 Ch. 250.
18. Third Ed., Vol. 6, p. 307.

the shareholders but also of the creditors. This is quite clear from the words of Lord Cairns, L.C., in *Ashbury's case*[19].

"The provisions under which that system of limited liability was inaugurated, were provisions not merely........ for the benefit of the shareholders .... but were enactments intended also to provide for the interest .... of those who might be creditors of companies of this kind."

The doctrine of *ultra vires*, therefore, enures for the benefit of both the members and creditors, and it is out of tune with the very purpose of the doctrine that if an *ultra vires* act is threatened, the members can, but the creditors cannot, get an injunction.

The rule that creditors are not entitled to injunctions has, however, been sought to be justified on some grounds which are hardly adequate. Firstly, if the directors disburse the corporate capital for non-corporate purposes, they are personally liable to replace it at the action of the shareholders or liquidator. This, it is suggested[20], preserves the capital of the company and makes it available for the payment of creditors. But this hardly seems to do justice to creditors in those cases in which the directors waste the corporate assets with the acquiescence of the shareholders. Even as members join a company on the faith of its objects so also creditors extend credit on the strength of the company's objects. And if a company deviates from its objects the creditors should be as much entitled to an injunction as members are.

The second suggested justification is that a creditor has got the ordinary remedy of obtaining the judgment against the company and to take out his execution and also, if the case warrants, of applying to wind up the company[21]. This affords no relief in those cases in which the creditor's loan is not immediately due so that he can neither take up an action for recovery nor present a petition for winding up. The creditors of a limited company give credit not to the shareholders but to the assets of the company. It would, therefore, be unreasonable if they could not restrain the wasting of those assets.

A third suggested justification is that such an action is wholly unprecedented, and, if permitted, the Courts "would be called upon to interfere with the concerns of almost every company against which a creditor might suppose that he had demands"[22] The creditor, however, does not want to interfere with the company's affairs. He sues the company to restrain it from doing certain acts which the company has no power to do and which are, indeed, prohibited. Moreover, he will always have to discharge the heavy burden of proof.

Hence, it is not necessary in India to follow English cases on the point.

RIGHT OF PUBLIC.

The law was stated by Cozens-Hardy, L.J., in *Towers* v. *African Tug Co.*[23]:

"............ although it has long been established that such an action may be maintained by a shareholder suing on behalf of himself and all other shareholders against the company, the plaintiff in an action so framed must be a person who is really interested. The action cannot be maintained by a common informer, nor by a person who happens to be within the possibility of injury."

---

19. In *Ashbury Carriage Co.* v. *Riche*, (1875) L.R. 7 H.L. 653 at 667.
20. Halsbury's Laws of England, Third Ed., Vol. 6, p. 307.
21. Lord Hatherley, L.C., in *Mills* v. *Northern Rly. of Buenos Ayres*, (1870) L.R. 5 Ch. 621 at 628.
22. Lord Hatherley in *Mills' Case*, at p. 628.
23. L.R. (1904) 1 Ch. 558, 571.

INDUSTRIAL RELATIONS IN INDIA

By

S. N. Dhyani, *Lecturer in Law, Lucknow University*.

The modern complex industrial relations in industrial countries stand in sharp contrast to the simple arrangement in the past which governed the relations between the owner and his workers. In the early period, as elsewhere, in India labour was regarded as a commodity subject to the general laws of supply and demand. Workers were mostly subject to the autocratic powers of the management which was callous of their welfare that resulted in ruthless exploitation and oppression. The situation was further aggravated because workers lacked unity which was the only guarantee for better working conditions and higher standard of living. The employers lost sight of all these considerations which was the prerequisite of industrial progress, peace and good relations. It created an antagonism, a conflict of interest between the employers and the workers which gave rise to the problem of industrial relations of devising ways and means of harmonising this conflict of interest. Thus, industrial relations system of a country is determined primarily by various forces economic, political and social aptitudes of the people. Secondly, it is to be found in the system of Government, the stage of industrial development of a country and lastly upon vigorous healthy trade unions.

Before giving an appraisal of present industrial relations in India, the study of it within the framework of the Constitution will be useful in this context.

Constitutional Background.

In the same year as the I.L.O. was set up (1919), the country received its Constitution under Montague-Chelmsford reforms. This Constitution conferred a modified degree of autonomy on the provinces. So far as labour was concerned the Central Legislature was given powers to legislate on all labour matters with the exception on housing, and also, with the approval of the Central Government and the overriding authority of the Central Legislature, on all other labour subject except mining.

Government of India Act, 1935.

There was a distribution between provincial and Central functions regarding legislation as well as administration. While the regulation of labour and safety

in mines and oilfields, on federal railways and major ports and inter-provincial migration were the subject for federal legislation[1], the following were the subjects of concurrent legislative jurisdiction[2]: factories; welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance including invalidity pensions; trade unions; industrial and labour disputes. The concurrent powers[3] were subject to the overriding jurisdiction of the Central Legislature.

New Constitution of India.

The concept of Indian Federation involved a decision as to what subjects should be matters for the Union Parliament to deal with and what might safely be entrusted to the legislatures of the individual States. It was found, as under the Government of India Act, 1935, that there were several matters which could not, in practice, be so rigidly circumscribed, in other words, there were subjects upon which both the Union and the States might usefully legislate.

Legislative Powers of The Union.

Like the Government of India Act, 1935, the new Constitution of India which came into force on 26th January, 1950, retains the same division of powers between the Union and the States. Chapter I of Part XI of the Constitution expressly deals with the legislative relations between Union and the several States comprised in it, as also the distribution of legislative powers between them. There are appended a number of Schedules which are to be regarded as the integral parts of the Constitution. In the Seventh Schedule are to be found three lists which depend for their contents upon the provision appearing in Chapter I of Part XI of the Constitution. List I, styled the Union list, consists of 97 items, and for our purpose the order in which they appear is as follows:[4] atomic energy and mineral resources necessary for its production; railways; maritime shipping and navigation, including shipping and navigation on tidal waters; industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest; regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; and other liquids and substances declared by Parliament by law to be dangerously inflammable; regulations of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest; regulation of labour and safety in mines and oilfields; regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest; industrial disputes concerning Union employees.

---

1. List I, Seventh Schedule, Govt. of India Act, 1935, items 35, 36, 20, 22 and 50.
2. List III, Seventh Schedule, Govt. of India Act, 1935, items 26, 27, 28 and 29.
3. S. 107 (1), Govt. of India Act, 1935.
4. Constitution of India, Seventh Schedule, items 6, 22, 25, 52, 53, 54, 55 and 61.

OF STATES.

List II, enumerates the following entries, namely[5] :—

Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union; industries subject to the provisions of Entry 52 of List I; gas and gas work.

In List III, styled the Concurrent List, we must notice some six entries[6], namely;

Trade unions; industrial and labour disputes; social security and social insurance, employment and unemployment; welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits; factories; boilers; electricity.

Similar to 1919 and 1935 Constitutions, it is provided that when the provisions of an Act[7], passed by the Union conflicts with those of an Act passed by a State, the former prevails over the latter.

Further the study of industrial relations acquires greater significance in the context of the preamble of the Constitution of India, which aims at securing for all its citizens—

"Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among all.

Fraternity assuring the dignity of the individual and Unity of the Nation."

In its Directive Principles of State Policy[8], it is stated that:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life."

The Constitution further provides certain principles of policy to be followed by the State securing[9]—

(*a*) that the citizens, men and women equally have the right to an adequate means of livelihood;

(*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for equal work for both men and women;

(*e*) that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(*f*) that childhood and youth are protected against exploitation and against moral and material abandonment.

---

5. Constitution of India, Seventh Schedule, items 23, 24 and 25.
6. *Ibid*, items 22, 23, 24, 36, 37 and 38.
7. Art. 254 (*i*), Constitution of India.
8. Art. 38, *ibid*.
9. Art. 39, *ibid*.

These basic and general principles were given a more precise direction when Parliament accepted in December, 1954, the socialist pattern of society as the objective of social and economic policy which as other policies, must therefore be governed by these principles and directions.

INTERNATIONAL LABOUR ORGANISATION AND THE LABOUR LEGISLATION IN INDIA.

The various International Labour Organisation Conventions broadly represent the world opinion on the subject reached after full careful discussions by all parties concerned—Governments, employers and workers. The influence of international labour conventions have been a very significant factor in shaping the course of industrial legislation in India. Labour legislation prior to 1919 was rudimentary relating to factories, mines and migration. The provisions of these laws constituted the minimum interference with the working conditions of labour and the relationship between the labour and the employer. In contrast, after the establishment of I.L.O. labour legislation in India made great strides as a result of the influence of international labour conventions. The principal enactments relate to such topics as protection, safety, sanitation, welfare, health, working hours, working conditions, minimum wages, fair wages, minimum age for children, nightwork of women, housing, old age pension, protection against accidents, weekly holidays, workmen's compensation, social security and insurance to employees in case of sickness, maternity and employment injury and provident fund, trade union and industrial disputes, etc. The Royal Commission on labour in India was set up in 1929 and its report is considered the *magna carta* of labour in India. The Commission too had recommended that great weight should be attached to international labour conventions. For good industrial relations in the industry the Commission proposed the establishment of industrial Councils on tripartite model of International Labour Conference. Accordingly in 1942 the Ministry of Labour established the Indian Labour Conference which meets annually and is almost exactly on the tripartite pattern of International Labour Conference. It examines all the measures of proposed labour legislation.

More recently, however, the Government decided that there should be a regular and detailed examination of international labour conventions and recommendations on a continuing basis. A Tripartite Committee, called the Committee on I.L.O. Conventions, was therefore set up with a view to accelerating their process of implementation of international labour conventions. The Committee meets twice a year and makes a detailed examination of a selected list of conventions and recommendations. Out of 104 I.L.O. conventions covering world wide labour problems, India's actual record of ratification is 21 conventions, though appearing at the first glance not very impressive, but this is because some of them are not relevant to conditions that prevail in India.

INDUSTRIAL RELATIONS BEFORE 1947.

The condition of the industrial worker in the pre-independence era in India was more appalling than that of his counterpart in the West. The Indian industrial worker was in receipt of wages which were insufficient to satisfy even the primary needs of civilised existence. There was no permanent industrial population on large scale. Unscrupulous individuals did not hesitate to fleece the labourer from beginning to end. The housing conditions were far from satisfactory. There was no provision for cleanliness and sanitation or for normal domestic life. There

were very few agencies conducting social welfare work among them, planning their leisure and making suitable arrangements for the health, education and recreation for their children. The hours of work and wages were deplorable when compared with the Western countries. Even children were made to work 30 hours per week. Social insurance schemes were almost non-existent. Even if law provided maternity benefit, employers frequently resorted to unfair means in depriving expectant mothers of what was due to them. The bargaining capacity was not equal to that of employer, with the result the former was often obliged to make a forced agreement. Up to 1926 Trade Unions were liable to prosecution and only in that year the law recognised their existence. Since the end of the First World War labour had been organising itself and conducting several strikes some of which had been wholly or partially successful. But the Trade Disputes Act, 1929 penalised sympathetic strikes and those designed to coerce the Government. It forbade the transference of money from one Union to another and the cessation from work of those engaged in public utility service unless 14 days notice was given in writing, Labour was disunited, and consequently there was no possibility of collective bargaining. The relations between the employers and the employees were one of antagonism, opposition and intolerance. The Indian Trade Unions Act, 1926 though it had given legal and corporate status to Trade Unions and immunity[10], to their officers and members against civil and criminal actions, imposed no obligation on the employers to recognise and deal with registered Trade Unions. The Royal Commission on Labour in 1931 had strongly recommended in favour of recognition of trade unions, which meant the right of the Union to negotiate with the employer in respect of matters affecting either the common or the individual interests of its members. Throughout the thirties recognition was a recurring cause of friction between employers and the organised labour. In order to help the war, effort, several emergency measures were adopted by the Central Government concerning industrial disputes during the War. By rule 81-A of Defence of India Rules strikes and lock-outs were prohibited and compulsory arbitration was devised which left no option to the trade unions to exercise their right of self help, their right of direct action, and of collective bargaining. The Governmental attitude regarding industrial relations was neither one of opposition nor of encouragement, but primarily of maintaining industrial peace regardless of labour demands and aspirations.

Labour Relations After 1947.

It was evident in the post-independence era that the *sine qua non* of industrial harmony was collective bargaining wherein the employers and employees bargain on equal terms. But collective bargaining was an impossibility in the face of strong opposition from the employers along with the totally unorganised labour unions or multiplicity of such trade unions. Therefore in this transitional period, labour management relations had to be revolutionalised according to the changing needs of society. As a consequence of the political changes, national leaders sought and discovered a new economic policy, conveniently termed as " mixed economy " as suitable basis for industrial development of the country. At the Industries Conference held in December, 1947, the resolution on industrial truce was adopted. The Conference was of the view[11] that " the increase in the industrial production

10. Ss. 17 and 18, the Indian Trade Unions Act, 1926.

11. *See* Summary of Proceedings of the Sixth Labour Ministers' Conference, 1948 at page 30.

which is so vital to the economy of the Country cannot be achieved without the fullest co-operation between labour and management and stable and friendly relations between them. The employer must recognise the proper role of labour in industry and the need to secure for labour, fair wages and working conditions; labour for its part must give equal recognition to its duty in contributing to the increase of national income without which a permanent rise in the general standard of living cannot be achieved". The Industrial Truce Resolution[12], *inter alia* provided : "(*a*) steps to be taken for the distribution of profits meeting the fair demands of labour; (*b*) establishment of machinery—central regional and functional for the study and determination of fair wages and conditions of labour ; and fair remuneration for capital ; and the methods for the association of labour in all matters concerning industrial production, such as formation of Central, Regional and Unit Production Committees ; (*c*) the constitution in each industrial undertaking of Works Committees representating management and duly elected representatives of labour for the settlement of disputes which may arise from day to day. . . . . " These having been accepted the Conference called upon labour and management to agree to maintain industrial peace and to avert lock-outs, strikes or slowing down of production during the next three years.

In April, 1948, the Government of India enunciated a clear statement on industrial policy which indicated India's bent towards the socialistic pattern and which committed her to a number of public enterprises. The Resolution on Industrial policy[13] para. 9 is of special significance in this context. Amongst other things the resolution states: " . . . . The system of remuneration to capital as well as labour must be so devised that, while in the interest of consumers and primary producers, excessive profits should be prevented by suitable methods of taxation and otherwise, both will share the product of their effort, after making provisions for payment of fair wages to labour, a fair return on capital employed in the industry. . . " Government of India, in addition proposed to overhaul regulation of Industry by the State, proposed to establish machinery for advising on fair wages, fair remuneration for capital and conditions of labour. It further envisaged to associate labour in all matters concerning industrial production in all levels. Further more in case of unresolved conflicts between management and labour industrial relation machinery was to be established for dealing with major disputes.

Consequently, to promote healthy employer-employee relations, round about fifties we find on the statute book many enactments in this regard. Some of these important measures are the—Industrial Employment (Standing Orders) Act, 1946 requiring the employers in industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen so employed; the Industrial Disputes Act, 1947 for providing suitable machinery for the satisfactory settlement of disputes ; now the repealed Industrial Disputes (Appellate Tribunal) Act, 1950, which established an Appellate Tribunal in relation to industrial disputes to hear appeals against the awards and decisions of Industrial Tribunals ; the Indian Trade Unions (Amendment) Act, 1947 regarding compulsory recognition by employers of representative of Trade Unions ; the Minimum Wages Act, 1948, establishing statutory wages—fixing

12. *See* Summary of Proceedings of the Sixth Labour Ministers' Conference, 1948 at page 30.
13. *Ibid*, 31.

machinery; and the Employees' State Insurance Act, 1948 for an integrated scheme of insurance against sickness, maternity and employment injury, etc. Besides these measures, the State Governments taking full advantage of their concurrent powers in respect of labour, had also enacted supplementary legislation dealing with their own labour problems and had aligned themselves with the Government of India in the matter of progressive labour legislation.

Since 1950 India has been gradually moving ahead on the "socialistic pattern" of society where the principal means of production are under social ownership or control. This is in pursuance of the objectives stated in the Preamble and the Directive Principles of State Policy of the Constitution of India. The socialistic ideal aims at the elimination of class conflicts and securing for every body his due. In its perfect form it should admit of no exp oitation by the producers of the consumers and labourers. In fact this is the paramount justification for a public enterprise. Accordingly due stress has been laid on the good of labourers in determining the proper contours of management. The First Five Year Plan envisaged that labour problems should be approached from two angles[14]: the welfare of the working class and the country's economic stability and progress. It maintained that besides the satisfaction of the basic needs for food, clothing and shelter; a worker should enjoy improved health service, wider provisions of social security, better educational opportunities and increased recreational and cultural facilities. He should have freedom to organise and adopt lawful means to promote his rights and interest and if, necessary to have access to impartial machinery for the settlement of industrial disputes. The Second Five Year Plan adopts the Avadi Resolution on economic policy which refers in these words :

" The achievement of a socialist pattern of society has been accepted as the objective of the economic policy. This means that basic criterion for determining the advance is not private profits but social gain......"

The socialist pattern of society without a labourer getting his due would be contrary to the very fundamentals of socialism. Industrial policy, as other policies, must therefore be governed by these principles and directions. The Industrial Policy Resolution 1956[15], besides the programme of industrial development aims at proper amenities and incentives for all those engaged in industry. It declares "The maintenance of industrial peace is one of the prime requisites of industrial progress. In a socialist democracy labour is a partner in the common task of industrial development and should participate in it with enthusiasm. ......There should be joint consultation and workers and technicians, should whereever possible, be associated progressively in management." Accordingly in India to achieve these objects methods have been devised either by legislation or by co-operation between industry and government. Labour relation enactments have been passed and the idea in public of trade unionism and collective bargaining[16], is steadily increasing. The Constitution has given a death blow[17] to the old policy of negation of workers' freedom to combine and act for their mutual protection.

---

14. International Labour Review, 1954, 194.
15. Programmes of Industrial Development 1956-61, 434.
16. *See* The Indian Trade Unions (Amendment) Act, 1947 and Labour Relations Act, 1950.
17. Art. 19 (1) (*c*), Constitution of India.

Consequently we find in all recent labour legislation, the industrial relations are being so arranged which aim at economic security and fair wages for the labour. The State in public undertakings has become a model employer. For happy labour management relation Works Committees have been established consisting of the representatives of employers and employees to settle difference in the day to day administration. As regards protection against economic consequences and old age, the Employees' Provident Fund Act, 1952 is gradually being enforced in different States of India. Employees' State Insurance Act, 1948 as amended in 1951 have been made applicable *inter alia* to employees working in factories in Delhi, Kanpur and Calcutta, etc., and the workers are entitled to benefits of sickness, maternity and employment injuries. The Industrial Disputes Act has been amended so as to prohibit appearance of lawyers[18] in the original and appellate Tribunals. The Labour Disputes (Appellate Tribunal) Act, 1950 establishing the Labour Appellate Tribunal to hear appeals from awards or decisions of Industrial Tribunals has been abolished by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. The main consideration for the abolition of Appellate Tribunals was its tardy proceedings with legal technicalities, formalities and appeals. At the Nainital Conference, 1952 the representatives of labour had demanded its abolition but the employers did not agree. In 1956 the necessity for fair settlement of disputes, without waste of time and money became imperative and the Government of India decided to abolish the Industrial Disputes (Appellate) Tribunals. Under the Fair Wages Act, 1951, wage boards have been set up in several industries. The Fair Wages Committee had recommended a general wage increase with regard to living wages for workers. Wage levels in most of the industries have been far below the living wages and unless prompt steps were taken to raise them, it was difficult to attain a high level of productivity, so necessary for the country's economic growth and happy management of labour relations essential for industrial peace. The management have been complaining of a low labour productivity while over-all production of the country has been going up. Labour productivity can not increase much, unless there is a contented labour force which means as a first step a living wage. The Planning Commission has recognised the need of a Wage Commission for the country and the Union Labour Ministry has set up wage boards for various industries so that any wage structure for the plan period should be such that it is rational, practical and realistic and workers would not have always to quarrel and fight with employers and management in getting an enhancement of their wages. In view of this consideration, by the Working Journalists (Industrial Disputes) Act, 1955 the working journalists are entitled to the benefits of the procedure for settlement of disputes envisaged in the Industrial Disputes Act, 1947 which formerly did not apply to working journalists.

Rationalisation or reduction in job requirements in industry contemplated by the Plan also presents a very grave problem for industrial harmony. While rationalisation is essentially necessary with a view to improve production and to reduce costs, yet there cannot be rationalisation which does not entail partial retrenchment of labour personnel. The Kanpur Textile Mills Rationalisation Committee[19] in its interim report in 1956 has held that "immediately there can be no extension of rationalisation or reduction in job requirements owing to certain deficiencies in

18. S. 36 (3), Industrial Disputes Act, 1947.

19. See *National Herald*, December 3, 1956.

physical working conditions and defects in machines. The time in which rationalisation can be introduced depends upon the pace at which the mills bring about the prescribed physical, machanical and operative working conditions." Though the Committee recommended strongly that vacancies caused by death, resignation, retirement and abandonment to be set off against labour thrown out of job, but the alternative occupations may not be readily available. This has the effect of making rationalisation almost always a fruitful source of labour disputes.

Lastly, the recent controversial problem affecting body politic in general and industrial policy in particular, has arisen due to joint stock companies contribution of funds to the political party or parties which will advance policies conducive to the interest of the Company. This incidental question came up first before P.B. Mukerji, J., of the Calcutta High Court[20], who remarked "to induce the government of the day by contributing money to the political funds of political parties, is to adopt the most sinister principle fraught with grave dangers to the commercial as well as public standards of administration." It further added that:

"To convert convictions and conscience by money is to prevent both democracy and administration." Chagla, C.J., observed in almost identical way. His Lordship said:[21] "It is with considerable uneasiness and a sinking feeling in the heart that we approached this appeal and proposals of the Tata Iron and Steel Co., Ltd., that they should be permitted by an amendment of their memorandum of association to make contributions to political parties. Democracy in this country is nascent and it is necessary that democracy should be looked after, tended and nurtured so that it should rise to full and proper stature. Therefore any proposal or suggestion which is likely to strangle that democracy almost in its cradle must be looked at not only with considerable hesitation but with a great deal of suspicion." As a matter of fact the part played by industrial concerns and industrialists in social evolution is a dismal chapter in history. For a socialistic pattern of society nay for industrial democracy such manoeuvre by trading companies is to keep complete control over the means of production and distribution is full of grave dangers. It is a danger which might grow apace and which might ultimately overwhelm democracy in this country Parliament should therefore intervene prohibiting such activities for keeping "the springs of democracy and administration reasonably pure and unsullied." For it has been observed by Laski "Classes excluded from a share in power have also been "classes excluded from a share in power have also been classes excluded from a share in benefits". The industrialpeace and harmony will be a myth if such corrupt practices go unchecked. If this goes so and the political leaders become dummy under the influence of "big money" it will be a great disaster to the principles and philosophy for which India stands.

Co-operation and Co-ordination between Labour and Management.

The most important factor in shaping the course of industrial relations has unquestionably been the extent of co-operation at various levels between labour and management which in itself largely depends upon healthy trade unionism and the attitude of the State. In India the trend of Indian labour policy has been to promote harmonious industrial relations through tripartite discussions and thereby to bring

20. In Re *Indian Iron & Steel Co., Ltd.*, 61 C.W.N. 377.
21. *Jayanti Lal* v. *Tata Iron & Steel Co., Ltd.*, (1957) 69 Bom. L.R. 738.

together employers and workers to settle their differences on a mutually agreed basis. The Industrial Truce Resolution 1947, and the Industrial Policy Resolution 1948, refer to the establishment of machinery at all levels by associating workers for advising on fair wages, fair remuneration for capital and conditions of labour. The Government of India to achieve the above avowed objects, established the Central Advisory Council for Industries, consisting of the representatives of the Government, employers, labour, consumers and other interests, to advice the Government on all matters pertaining to industries covered by the Industries (Development and Regulation) Act, 1951. Further the Central Advisory Council for Labour was set up with a view to ensuring the fullest co-operation between labour and capital as was contemplated by the Industrial Truce Resolution of 1947 regarding provisions, *inter alia*, for payment of fair wages. The Council was assisted in its study of the subject of fair wages by a Tripartite Committee on Fair Wages. The Committee on Fair Wages recommended the machinery for fixation of fair wages largely on familiar lines: Tripartite Wages Boards Co-ordinated by an appellate Central Wage Board. In addition, the tripartite labour conference which is held every year to discuss the trend of industrial relations, has had also beneficial effects in formulating labour plan, problems, furthering industrial democracy, recognition of workers' dignity and status, and adoption of measures to maintain industrial peace.

Corresponding to the co-operation at the national level the regional machinery in the States too is patterned on tripartite basis. The State Governments have established State Advisory Boards to cover the entire field of industry within the State concerned. The Industrial Policy Resolution contemplated the establishment of Works Committees and Production Committees so established are of tripartite character consisting of equal number of representatives of employers and workers. Under the Industrial Disputes Act, 1947, the appropriate Government[22], Central or State as the case may be, may by order require employers in the industrial estabishments employing 100 or more workers to set up Works Committees consisting of the representatives of employers and workers. The duty of the Works Committee is to promote measures for securing and preserving amity and good relations between employers and workers. The Industries (Development and Regulation) Act, 1951 also provides for the establishment of development councils at the industry level; these councils are to be constituted in the same way as the Central Advisory Council for Industries and are responsible for recommending production targets, suggesting norms of efficiency, promoting vocational training and incentive measures, etc.

In India the trend of modern labour legislation is an attempt to promote collective bargaining. The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Relations Act, 1951 provide for collective bargaining which enables the parties to negotiate a change in conditions of employment in an amicable atmosphere before any actual dispute arises. But the course of collective bargaining in India itself likewise will be primarily determined by the quick or slow growth of trade unionism. The multiplicity of trade unions is basically connected with illiteracy of the working class. The employers in India are sufficiently organised. But this is not the case with the workers. Consequently in the absence of a strong trade union movement it is difficult if not impossible to enforce bargaining. Therefore, we find a unique method of encouraging collective bargaining through statutory measures. For example the

22. S. 3, Industrial Disputes Act, 1947.

Bombay Industrial Relations Act, 1946 aims at collective bargaining by conferring representative status on a union commanding allegiance of a minority. The Trade Unions (Amendment) Act (XLV of 1947) provides for compulsory recognition by employers of the representative Trade Unions. Thus a representative Trade Union shall have all the rights of recognised Trade Union in its relation to the employer. The proceedings of the Seventh Session of the Labour Minister's Conference, 1949[23], formulated points for consideration for collective bargaining. The points for consideration were :

(i) the determination of the recognised bargaining agent for employees of a particular industrial unit ;

(ii) the circumstances in which a collective agreement will be regarded as binding upon both the parties, *viz*., the employers and all the employees in that particular industrial unit :

(iii) the duration for which a collective agreement will be regarded as binding;

(iv) the procedure for resolving differences in regard to the interpretation of the terms of collective agreement, and

(v) the procedure for modifying the terms of a collective agreement, when it is about to expire."

Shri V. V. Giri, then Union Labour Minister at the Nainital Conference, 1952, pointed out the desirability of collective bargaining against compulsory adjudication which , he said, should be the very last resort and only in exceptional circumstances. Addressing the General Meeting of the Merchants' Chamber of U.P. on October 20, 1957, Shri Giri pleaded[24], that for maintenance of good industrial relations workers should be partners. Consequently he emphasised the necessity for the creation of a permanent machinery both at the center and at the State level to deal with industrial disputes. He further explained that "the efforts should be made in every industry and in every unit of it to constitute joint standing machinery with equal numbers of representatives of labour as also of employers. The primary task of the body was not only to come into operation whenever a strike or lockout occurred, but to meet at regular intervals and discuss all the issues—production, welfare measures, rationalisation and the like problems pertaining to the industry."

It is said that the growth of collective bargaining is handicaped by the dominant role assigned to compulsory arbitration in the settlement of industrial disputes[25]. It is further argued that the compulsory arbitration has cut at the root of the trade union movement. When workers find that there is a machinery other than their own that would settle their disputes, they hardly have any faith or necessity of it in their union. Therefore, it is said that the removal of compulsory arbitration would help in providing solidarity among workers as that alone would bring them strength to bargain effectively[26]. But so long as the concept of private property in its die-hard form remains, the inequalities will not wither and consequently workers cannot have a say in determining the conditions of service—wages, hours of work, leave rules,

---

23. *See* Summary of Proceedings of the Seventh Session of the Labour Ministers' Conference, 1949.
24. See *National Herald*, October 20, 1957.
25. S. 10 (1), *Proviso*, Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956.
26. *Indian Labour Gazette*, October, 1957, 337.

holidays, amenities for life, protection against exploitation, insurance against casualties and so on. This is possible only through Trade Unions playing a constructive role for labour welfare instead of being instruments in the hands of unscrupulous politicians and reactionary employers, all of whom try to exploit the Unions for their own selfish ends. Therefore the only alternative form of settlement of the disputes on a fair and just basis having regard to prevailing conditions in the industry remains the compulsory adjudication as provided by the State for fair and amicable settlement of the disputes. Till workers are educated to a point where they could understand the usefulness of strong trade union movement essential for industrial democracy and the public opinion regards the movement as one that has come to stay, abolition of compulsory adjudication of labour disputes in the various sectors of planned national economy of India today will not result in good industrial relations.

BOOK REVIEWS.

THE MOTOR VEHICLES ACT, 1939, with notes. Published by Sundaram Industries (Private) Ltd., Madras. (1958), Price Rs. 25.

Road Transport has grown to a major industry in our country and with its programmes of expansion and increasing population the problem of motor transport has gained great importance. The Motor Vehicles Act is a Statute governing the use of motor vehicles on roads either for private purposes or as a trade. With the growth of road transport the Act itself has gained an importance and having regard to the knowledge gained by experience the Act has been amended now and then to meet the needs of present day problems. The clamour and competition for route permits for passenger buses has brought many departmental actions to the scrutiny of Courts of law. The Motor Vehicles Act, as some other legislations of its kind, has been the subject-matter of several decisions of the High Court and the Supreme Court. A book with the up to date amendments and Rules is bound to be of immense use to all concerned. The road transport industry, whether passenger transport or goods transport, has not been of organised growth in this country. Enterprising and far-sighted men, like the founder of the parent concern of the present publishers, and a few others have built up an organised and well developed trade in this line. But the trade is to a great extent still in the hands of individuals or groups who are not so mindful of the needs and convenience of the public. In many cases the management is in uneducated hands, who are liable to fall into the clutches of the law. To them a knowledge of the Act and Rules is of special importance.

The book under review is useful to lawyers and laymen alike. The Act as amended up to date with commentaries under each section and the Rules and several other useful information of general interest contained in the book are quite useful. The paper, printing and get up is excellent and the book is very properly dedicated to the memory of the late Sri T. V. Sundaram Iyengar who can rightly be called a pioneer in the field of motor transport trade in this part of the country.

PARTITION ACT, 1893, by *Manindra Nath Das*, West Bengal Civil Service (Judicial). Published by S. C. Sarkar and Sons (Private) Ltd., 1-C, College Square, Calcutta 12. (1958), Price Rs. 2-50 nP.

The Partition Act is a small enactment containing about half a dozen operative sections and deals with the special powers of Court in suits for partition where partition is impossible with out destroying the intrinsic value of the very property to be divided. It is of importance in partition suits under special circumstances. This small handy commentary on the Act, written in a simple fashion, would be found useful by practitioners.

CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION by *R. Deb*, B.A., (HONS.) B.L., Chief Law Instructor, Central Police Training College, Mt. Abu. Published by S. C. Sarkar and Sons (Private) Ltd., 1-C, College Square, Calcutta 12. Price Rs. 18.

Investigation of crimes by officials of the State is both a legal and social problem. While investigation as a prelude to prosecution and punishment of the offender is a matter of legal procedure, its value for purposes of learning the background and causes of criminal tendencies, with a view to correct and adjust the environments, is a social and human problem. Officers in charge of this work should be familiar with the legal requirements and formalities of an investigation so that the evidence gathered might be used in an effective prosecution. How often have we heard the Courts say that an offender has escaped his due punishment because of an improper investigation offending against the requirements of the law. The subject is highly technical and requires a study of several important enactments like the Penal Code, Evidence Act, Criminal Procedure Code, etc. All Investigating Officers are not so familiar with the principles of the law. The author

of this work has both the experience and qualification to deal with the subject from a practical standpoint. The author deserves compliment for bringing out a handy volume on the subject on which there are not many works in our country. The subject-matter is dealt with in a simple and lucid way which will be found very useful by Officers of the Police Department and lawyers.

GANGULY'S CIVIL COURT PRACTICE AND PROCEDURE, VI Edn. (1958) by *Shambudas Mitra*, Advocate, Calcutta. Published by Eastern Law House, Private Ltd. Calcutta. Price Rs. 14.

This familiar hand-book known to a generation of practising lawyers, more particularly in Bengal, has appeared again after an interval of over two decades. The utility of a book of this nature as desk referencer needs no special mention. The book contains information on many matters like pleading conduct of suits, including examination of witnesses and marking of documents, execution of decrees, appeals, review, etc. A summary of the more important provisions of some of the Statutes like the Civil Procedure Code, Transfer of Property Act, Constitutional remedies, Provincial Small Causes Courts Act, Succession Act, Guardians and Wards Act, Provincial Insolvency Act, Stamp, Court-fees and Limitation Acts and certain local Acts of Bengal form Part II of the Book. It is needless to mention that the book is written mainly for the use of mofussil practitioners of Bengal and the case-law and notes and local statutory amendments are all noted from that viewpoint. The model forms contained in Part IV of the book would be of guidance to junior practitioners. Part V contains notes on some important rulings, chronological tables and a small glossary of law terms.

THE BANKING COMPANIES ACT, 1949, by *K. M. Ghosh*, Advocate, Calcutta. Published by Eastern Law House, Private Ltd., 54 Ganesh Chunder Avenue, Calcutta 13, 1957, Price Rs. 6.

The Banking Companies Act, 1949, is a codification in the form of a separate enactment of the provisions of the former Indian Companies Act which contained a chapter relating to Banking Companies. This Act has since been amended by several Acts. The commentary under review with Rules and notifications will be found useful by all companies transacting the business of banking in India.

PRINCIPLES OF SALES-TAX LAWS by *Kharag Ram Chaturvedi*, B.L., Published by Eastern Law House (Private) Ltd. 54, Ganesh Chunder Avenue, Calcutta. 13 (1958), Price Rs. 16.

No taxation measure of the Government has come in for public and judicial comment as the Sales-tax Law in recent years. Sales-tax as a source of revenue was hit upon in 1939 by the then Province of Madras and was soon caught up by almost all the other Provinces in course of some few years. By the time the Constitution of India came into force the entire country had some system of levying sales-tax, each state having a slightly modified scheme, both as regards the taxable commodities and the scale of tax. The subject of inter-state sales-tax gained great importance by the decisions of the Supreme Court in the *United Motor's case* which lead to a great deal of procedural complications and all the States became interested in the laws of the other States. The subsequent decisions of the Supreme Court in the *Bengal Immunity case*, however, made a great inroad into the powers of the States to tax inter-state sales and to avoid a great loss to the revenues of the country the Central Sales-tax Act of 1956 had to be passed. Since the coming into force of that Act there hasbeen a number of publications on the Sales-tax Laws of the country and the present volume is the latest in the field. The present book is a commentary on the Bengal Sales-tax Act with a comparative study of the Acts of the other States. The Central Sales-tax Act with the Rules is also included. The book will be found useful by lawyers, accountants and merchants.

[END OF (1958) I M.L.J. (JOURNAL)].

UNIVERSITY LIBRARY LAW COLLEGE

THE

MADRAS LAW JOURNAL.

I] JANUARY [1958

MARCH OF LAW.

Law is seldom static. It broadens from precedent to precedent. The increasing complexities of modern life throw up from time to time new problems for solution. The setting up of a new pattern of social life, the change-over from an agricultural economy to one partly agricultural and partly industrial, the secularisation of the Hindu personal laws, and the increased tempo of modern life and similar factors have been responsible not merely for a large volume of legislation but also for various matters being brought up for judicial elucidation. During the year under review about 27 decisions of the Supreme Court as well as a large number of decisions of the High Court have been reported in the columns of this journal. A brief reference to the more important of such decisions is here attempted.

Bar in Relation to the Courts.—In *Lalit Mohan Das* v. *Advocate-General Orissa*[1], the Supreme Court point out that while a member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can be fairly and reasonably submitted on behalf of his client, he is, at the same time, an officer of the Court owing a duty to the Court in which he is appearing to uphold its dignity and decorum and not to do anything to bring the Court into disrepute, and that where he imputes partiality and unfairness against the judicial officer in open Court by suggesting that he followed no principle in his order he is scandalising the Court, and such conduct was not a matter between an individual member of the Bar and a member of the judiciary but brought into disrepute the whole administration of justice. *Associated Tubewells Ltd* v. *Gurjarmal Modi*[2], holds that it is not consistent with the dignity of the Court and the decorum of the Bar that any course should be permitted which may lead to a controversy as to what a Judge stated in Court and what view he held, and that in an application for review of an order dismissing a petition for special leave it is improper to assume and assert as to what the Judge's view was in making a particular order when the order pronounced did not set it out. In *K. K. Swami In re*[3] it is observed that Courts and Judges could not be expected to be fully conversant with the intricacies of criminal procedure and have a right to expect assistance from counsel, and in a state prosecution such assistance must come from the state prosecutor in charge, and it is for him to bring to the notice of the Court the proper procedure to be followed.

Private International Law.—In *Sivaramakrishna Iyer* v. *Kanukkarathiyute*[4], it is held to be a well-settled principle of international law that no Court has jurisdiction in respect of immovable property situated in a foreign territory and no decree can be passed charging foreign immovable property or recognising a mortgage over such property and passing a decree, that where an action in *personam* and the obedience

1. (1957) 1 M.L.J. (S.C.) 78
2. (1957) 2 M.L.J. (S.C.) 137.
3. (1957) 1 M.L.J. 19.
4. (1957) 1 M.L.J. 14.

of the decree can be compelled by the Court personally against the judgment-debtor by directing him to collect and deposit into Court the rents and profits the jurisdiction of the Court could extend to such cases despite the property being in foreign territory, but there can be no decree creating a right or interest over immovable property situate in foreign territory so as to enable the decree-holder to proceed against such properties in execution.

CONSTITUTIONAL LAW.—The decision of the Supreme Court in *Fernandez* v. *State of Kerala*[1], reaffirms the principle that in construing fiscal statutes and in determining the liability of a subject to tax, regard must be had to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. In *A. S. Krishna* v. *State of Madras*[2], it is held that when a law is impugned as *ultra vires* the legislature that enacted it, what has to be ascertained is the true character of the legislation as an organic whole and not as a mere collection of sections that could be disintegrated and examined, and that if the legislation is in substance one on a matter assigned to the legislature it must be held valid in its entirety even though it might incidentally touch on matters which are beyond its competence. The Supreme Court further holds that the presumptions in section 4 (2) of the Madras Prohibition Act are presumptions which are to be raised not generally in all criminal trials but only in the trial of offences under section 4(1) of the Act, that they are purely ancillary to the exercise of legislative power in respect of Entry 31 in List II of the Government of India Act, 1935, and that the question of repugnancy with the Evidence Act and the Criminal Procedure Code does not arise In *Chamarbaugwalla* v. *Union of India*[3], the Supreme Court makes it clear that gambling as an activity cannot be described as a trade or business which has been guaranteed freedom in the Constitution, that it is outside the protection of Article 19 (1) (*g*), and there could be no question of the violation of any fundamental right by reason of the enactment of the Prize Competitions Act XLII of 1955. Likewise in *State of Bombay* v. *Chamarbawgwalla*[4], the Supreme Court holds that to control and restrict betting and gambling is not to interfere with trade, commerce, or intercourse as such but to keep them free and unpolluted and save them from unsocial activities, that the Bombay Lotteries and Prize Competitions Control and Tax Act XLV of 1948 as amended by Act XXX of 1952 was in pith and substance an Act with respect to betting and gambling, that the validity of the Act was not to be decided by the yardstick of reasonableness and public interest laid down in Article 19(6) and section 304 of the Constitution, and that no appeal can lie to a Court of law against the stringency and harshness, if any, of the law. *Guruvaiah Naidu* v. *State of Madras*[5], decides that 'public interest' contemplated by Article 19(6) in order to justify restrictions on the rights guaranteed by Article 19(1) (*g*) need not arise from the inherent nature of a particular trade, that since taxation is the supreme function of the state the law imposing a tax on sale is valid, that a system of licensing or regulation of trade with a view to enforce and administer the tax law efficiently is in the interests of the public within the meaning of Article 19(6), and that the licensing provisions under the Madras General Sales Tax Act (IX of 1939) relating to dealers in certain specified commodities like bullion, hides and skins, tobacco *etc* do not amount to unreasonable restriction on the freedom of trade guaranteed by Article 19 (1) (*g*) of the Constitution. In *Garikapati Veerayya* v. *Subbaiah Chowdhry*[6], the Supreme Court points out that where a suit had been instituted before the date of the Constitution the parties thereto had a vested right of appeal from the date of such institution upon terms and conditions then in force, that if the judgment sought to be appealed from was a judgment of reversal and the value of the subject-matter was above Rs. 10,000 the applicant for leave to appeal had a vested right of appeal to the Federal Court under the provisions of the Civil Procedure Code read with the Government of India Act, 1935 and the Federal Court Enlarge-

To be continued.

1. (1957) 1 M.L.J. (S.C.) 29.
2. (1957) 1 M.L.J. (S.C.) 59.
3. (1957) 2 M.L.J. (S.C.) 76.
4. (1957) 2 M.L.J. (S.C.) 87.
5. (1957) 2 M.L.J. 469.
6. (1957) 2 M.L.J. (S.C.) 1.

ment of Jurisdiction) Act, 1947, that such a right of appeal was a matter which would not fall within Article 133 of the Constitution, and that the jurisdiction and powers with respect to such an appeal being exercisable by the Federal Court immediately before the commencement of the Constitution, the applicant will have a right of appeal under Article 133 and was entitled to leave to appeal as of right. *Dhanalakshmi Ammal* v. *Income-tax Officer, Madras*[1] decides that an order by a High Court under Article 226 in a matter involving civil rights of parties will be an order in a civil proceeding within the meaning of Article 133. In *Associated Tubewells, Ltd.* v. *Gujarmal Modi*[2], the Supreme Court makes it clear that it is not the practice of that Court to give reasons for the dismissal of an application for special leave. The decision in *Clerks and Depot Cashiers of the Calcutta Tramway, Co.* v. *State of West Bengal*[3] lays down that the Supreme Court will interfere to set right decisions arrived at by Tribunals on questions of fact, only where the Tribunal has acted in excess of its jurisdiction, or where there is an apparent error on the face of the decision, or where the Tribunal has erroneously applied well-accepted principles of jurisprudence. *Abdul Majid* v. *State of Madras*[4] holds that apart from questions of guaranteed rights a person would be entitled under Article 226 to invoke the jurisdiction of the Court *ex debito justitiae* if he establishes that the order complained of was passed by an authority which had no jurisdiction at all and that in cases involving questions as to issuing of licenses a statutory right to object to the grant of license may not be the exclusive test to apply in deciding whether the applicant for the issue of a writ 'is an aggrieved person' or not. *C. D. Venkataraman*, In re[5], points out that the existence of an alternative remedy does not bar the jurisdiction of the High Court under Article 226, that it is merely a matter to be taken into account in the exercise of its discretion to issue the writ or not, and that at the preliminary stage the Court would consider not the mere existence of the remedy, but its reality, adequacy and effectiveness. *State of Madras* v. *Kassimla Charities*[6] decides that Article 226 cannot be invoked to convert a petition under it into a regular suit so as to determine questions of fact on a consideration of documentary evidence as in an original suit. In *Ganapathi Nadar* v. *State of Madras*[7], it is held that under Article 226 one petition by several persons aggrieved by a common order of reference for adjudication by the Tribunal under the Industrial Disputes Act is not permissible and that each aggrieved person must file a separate petition. *Raja of Ramnad* v. *State of Madras*[8] points out that a single petition under Article 226 by a trustee for relief in respect of several notifications under the Madras Estates Land Act and the Madras Estates Rent Reduction Act as regards the several institutions under his management could not be filed and that separate petitions will have to be filed regarding the properties comprised in each trust. *Paramount Films of India, Ltd. Madras Branch*, In re[9], makes it clear that an order of reference made by Government under section 10 (1) (*c*) of the Industrial Disputes Act is only administrative in its scope and therefore outside the purview of correction by a writ of *certiorari*, but the validity of the decision as to jurisdiction as a preliminary issue by the Industrial Tribunal may be challenged by an application for issue of *certiorari*. In *Sambandan* v. *Regional Traffic Superintendent, Southern Railway*[10], it is pointed out that whether an order affecting a civil servant's seniority in service is regarded as an administrative order outside the purview of correction by *certiorari* or as a quasi-judicial determination of the right of the civil servant it is not one where jurisdiction under Article 226 can be invoked, and no writ of *mandamus* can issue either because the only duty of the Executive is to a employ the civil servant at its pleasure and the Court cannot compel it to signify its pleasure only in accordance with the rules framed by it to regulate the seniority of civil servants of the concerned class. *Arunachalam Chettiar Firm* v. *Kaleeswarar Mills*[11] lays down that no writ of *mandamus*

---

1. (1957) 2 M.L.J. 567.
2. (1957) 2 M.L.J. (S.C.) 137.
3. (1957) 1 M.L.J. (S.C.) 23.
4. (1957) 2 M.L.J. 1.
5. (1957) 1 M.L.J. 26.
6. (1957) 1 M.L.J. 185.
7. (1957) 2 M.L.J. 54.
8. (1957) 2 M.L.J. 145.
9. (1957) 2 M.L.J. 357.
10. (1957) 2 M.L.J. 541.
11. (1957) 1 M.L.J. 254.

can issue the object of which is to declare the rights of parties, that a writ can issue only on principles analogous to those formulated in section 45 of the Specific Relief Act, that the writ is granted only to compel performance of duties of a public character, and that the Court will as a general rule refuse a writ of *mandamus* when there is an alternative specific remedy at law which is not less convenient, beneficial and effective. *Kaleswari Handloom Factory* v. *State of Madras*[1] holds that a writ of prohibition will generally issue to confine subordinate Tribunals or authorities within the limits of their powers, that application for the writ should be made as soon as the Tribunal has taken any step in any proceedings in which it has no jurisdiction to try, and that where a Tribunal has jurisdiction to try a particular issue and all factual questions which establish that jurisdiction the mere fact that such facts are denied by one side or the other does not mean that the High Court alone has exclusive jurisdiction to decide the question in proceedings under Article 226. *Rangaswami Raja*, In re[2], decides that Article 227 is confined to subordinate Courts, that a Judge of the High Court as such is not subordinate to the High Court, and that a civil revision petition against the order of the Judge of the High Court on the original side is not competent under the article. *Visalakshi Amma* v. *Anjaneyalu Chetty*[3] states that the High Court's jurisdiction under Article 227 is a limited one, that the principles applicable in deciding whether a writ of *certiorari* could issue under Article 226 will equally apply to cases of revision under Article 227, and a mere erroneous decision with nothing more is not enough to attract the jurisdiction under the article, so much so, the fact that the Master came to an erroneous conclusion on a wrong construction of the decree will itself be no ground for interference under Article 227. *Srinivasan* v. *President, District Board, Coimbatore*[4] points out that the protection afforded by Article 311(2) can be invoked only by the persons referred to in Article 311(1), and, therefore, where the petitioner was not a member of the civil service of the Union or of the State but was only an employee of the District Board the article cannot apply. In *T. M. R. Abdul Khader*, In re[5], it is held that a mere suspension order does not involve necessarily a reduction in rank, and, so, the mere suspension of a civil servant for a specified period from service would not fall under Article 311 (2).

INDUSTRIAL DISPUTES ACT.—In *Kaleswar Handloom Factory* v. *State of Madras*[1], it is laid down that an Industrial Tribunal established under the Industrial Disputes Act, 1947, has jurisdiction to decide whether what has been referred to it for adjudication is an industrial dispute or not within the meaning of the Act. *Kesava Reddiar* v. *Labour Appellate Tribunal*[6] decides that a 'workman' within the meaning of section 2 (*i*) is one who is employed by the employer, carrying the relationship of master and servant with the master having control over the latter; hence, there can be no question of industrial dispute unless the person employed is a 'workman' within the meaning of the Act. *Modern Match Industries* v. *Labour Appellate Tribunal*[7] states that the place of work may not decide the issue whether the relationship of master and servant exists, and the real question is whether the employer exercised control over the worker and whether the time of the worker was at the disposal of the employer. It also holds that it cannot be said that the Industrial Tribunal has no jurisdiction to award an enhancement of wages merely because the wages paid before the dispute were admittedly the highest paid by the employer in the industry concerned where it is found that payment at the old rates came nowhere near what had been accepted as the minimum living wage in such industry. It is further held that though the functions of the Industrial Tribunal are quasi-judicial it is not a Court and cannot be denied jurisdiction to take into account the factor that a certain amount is normally accepted as the minimum living wage for a workman. *Pudukottah Textiles, Ltd.* v. *Subramaniam*[8] points out that where the workers

1. (1957) 2 M.L.J. 589.
2. (1957) 1 M.L.J. 364.
3. (1957) 2 M.L.J. 387.
4. (1957) 2 M.L.J. 406.
5. (1957) 1 M.L.J. 55.
6. (1957) 2 M.L.J. 139.
7. (1957) 2 M.L.J. 135.
8. (1957) 2 M.L.J. 438.

of an employer are collectively made parties to an industrial dispute, all those in the service of the employer on the date of the order of reference under section 10(1) (*c*) will be parties to the dispute, and the Tribunal has jurisdiction to award compensation for the period for which a workman was unjustly kept out of employment. In *Punjab National Bank* v. *Sri Ram Kunwar*[1], the Supreme Court holds that the expression 'costs of proceeding' in section 11(7) means costs of the entire proceeding as determined on its conclusion and not costs in a pending proceeding nor costs to be incurred in future by a party, that 'costs incidental to any proceeding' means costs of interlocutory applications, etc., as determined at the conclusion of the hearing, that neither expression has reference to costs payable in advance or to halting and travelling allowance payable to a party, and that it will be a negation of justice and reason to direct a party to pay in advance the costs of the other irrespective of the final result of the proceedings. *Arunachalam Pillai* v. *Industrial Tribunal*[2] lays down that the purchaser of an asset belonging to an employer cannot be deemed to be a successor to the business of the employer within the meaning of section 18 (*c*). In *Management of Ambi's Cafe* v. *Thangavelu*[3], it is made clear that the suspension of an employee by the management pending an application for enquiry under section 22 is not a contravention of that section, that suspension does not am unt to termination of service, and that the order of the Tribunal passed on the employee's application directing his reinstatement and payment of compensation to him is without jurisdiction. *Bombay Prakash Bhavan* v. *Narayanan*[4] decides that suspension of a workman pending inquiry into his conduct or pending an application to the Tribunal under section 22 for permission to terminate his services would not amount to a punishment within the meaning of the section so as to attract the provisions of sect on 23 of the Industrial Disputes (Appellate Tribunal) Act. In *Kohinoor Saw Mills, Co* v. *State of Madras*[5], it is held that the exemptions under section 25-A (1) (*a*) and (*b*) of the Act as amended in 1953 are statutory exemptions, that it is not for Government or any other agency to grant exemptions, that the only jurisdiction conferred on Government in section 25-A (2) is to decide if the 'question' refe red to in the section arises, and, that 'question' within the meaning of the section connotes something in the nature of a *lis* and need not necessarily be an industrial dispute. *C. R. R. Ratnam & Co* v. *Ekambaram*[6] points out that under section 25-A as amended in 1953 the right of the Government to order recovery springs into existence enabling Government to step in only on there being an ascertained or predetermined liability which the employer has not discharged by payment, that the Government has not however the power to ascertain whether the workman is a retrenched workman, or consider the question of compensation, in case of dispute as to these matters, and that there is no machinery provided in the Act for the adjudication of these matters in the event of dispute.

INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT.—In *Mysore City Hotels Association* v. *Labour Appellate Tribunal*[7], it is held that the mere fact that a claim is belated will not oust the jurisdiction of the Appellate Tribunal, but it is a well-settled principle that a belated claim for bonus should not be investigated. *Newtone Studios* v. *Ethirajulu*[8] decides that it is only a contravention of section 22 of the Act XLVIII of 1950 that gives the workmen affected a right to apply under section 23 of the Act, that for the bar of section 32 to apply the workmen whose services have been terminated must be workmen concerned in the appeal before the Appellate Tribunal, that where both the workers and the management were parties to the industrial dispute, the dispute being a collective dispute, all the workmen will be workmen concerned in the appeal within the meaning of section 22 and interested in the principles that should govern the right of the management to effect retrenchment and the conditions subject to which that right would be exercised. *Pudukottah Textiles, Ltd.* v. *Subramaniam*[9] states that though neither a right to reinstatement nor a right to

1. (1957) 1 M.L.J. (S.C.). 53.
2. (1957) 2 M.L.J. 283.
3. (1957) 2 M.L.J. 393.
4. (1957) 2 M.L.J. 619.
5. (1957) 2 M.L.J. 87.
6. (1957) 1 M.L.J. 175.
7. (1957) 1 M.L.J. 11.
8. (1957) 2 M.L.J. 147.
9. (1957) 2 M.L.J. 438.

payment of wages when an employee is out of employment is a common law right nor a right in contract, such relief could be granted by the Appellate Tribunal under section 23 where the workmen have been discharged in contravention of section 22. *Arya Bhavan, Madras* v. *Seetharaman*[1] holds that to invoke section 23 it must be established that the contravention of section 22 was during the pendency of proceedings before the Appellate Tribunal and hence a workman dismissed after the award by Industrial Tribunal and before the filing of an appeal by the employer cannot invoke section 23. *Bombay Prakash Bhavan* v. *Narayanan*[2] lays down that the suspension of a workman pending an enquiry into his conduct or pending an application to the Industrial Tribunal will not amount to a violation of section 22 and cannot attract the provisions of section 23.

CONTRACTS.—In *Maniam Hiria Gowder* v. *Naga Maistry*[3], it is made clear that an agreement of partnership which will entail a transfer of a license or permit granted by the Government, when there is an express prohibition of such transfer is illegal and void under section 23 of the Contract Act, that where a penalty is imposed for the contravention of law it is an indication that the transaction involving such a contravention is prohibited and therefore illegal, that where there is no penalty imposed the question whether the contract is illegal or not has to be determined on a consideration of the purpose of the legislation, whether the prohibition is purely a measure for the protection of the revenue or intended to be in the interests of the public, and that in the latter case the contract will be void. *Sakkarama Rao* v. *Nagasami Rao*[4] states that discharge of a mortgage by allowing the mortgaged property to be in the possession of a co-mortgagee would amount to payment to a joint promisee within the meaning of of section 45. *Rangaswami Reddi* v. *Doraswami Reddi*[5] holds that a plaintiff who has been guilty of a material alteration of the promissory note sued on cannot enforce the note or fall back on the original consideration, nor can he invoke the provisions of section 65 to sustain his claim. *Narayanaswami Chetty* v. *Soundararajan & Co., Ltd.*[6] points out that where there is no term in the contract that either the buyer or the seller should procure a license for clearing the goods contracted for, the relevant factors to be considered to decide on whom the obligation lay are the place at which the contract was made, the situation of the parties and the place where the goods were when the contract was made. It further points out that it is the duty of the seller on c.i.f. terms to tender the documents within a reasonable time after shipment to the buyer and normally it is the duty of the buyer to pay the price on such tender, and the duty of the buyer to pay before the arrival of the goods cannot be construed as a stipulation that the payment would be made before the tender of the documents. *Sundararama Iyer & Co.* v. *Murugesa Mudaliar*[7] lays down that where the contract stipulated that on the failure of the buyer to take delivery as required by the seller's notice the seller shall have the right to sell such goods, such term should be construed as an express contract mentioned in section 35 of the Sale of Goods Act and it is the duty of the seller to intimate to the buyer that the goods are ready for delivery and ask him to tender the price and take delivery of the goods, and in the absence of such notice by the seller he is not entitled to any damages and the buyer can ask for refund of his advance.

COMPANY LAW.—In *Dalichand* v. *Madras Kirana Merchants Association*[8], it is pointed out that an association without share capital and not for profit which has been given a corporate life by reason of a license granted under section 26 of the Companies Act, 1913, is a 'company' within the meaning of section 2 (2) and an application under section 38 for rectification of the rigister of members is competent. *Bank of Hindustan* v. *Suryanarayana Rao*[9] holds that, under section 34, a company has no authority or power to consider registration of a transfer in the absence of a duly stamped transfer deed signed by both transferor and transferee except in certain

1. (1957) 2 M.L.J. 557.
2. (1957) 2 M.L.J. 619.
3. (1957) 2 M.L.J. 264.
4. (1957) 1 M.L.J. 3.
5. (1957) 2 M.L.J. 196.
6. (1957) 2 M.L.J. 328.
7. (1957) 1 M.L.J. 221.
8. (1957) 2 M.L.J. 416.
9. (1957) 2 M.L.J. 517.

extraordinary circumstances, that the company's discretion extends only to the matter of registering the transfers and not to decide on their validity, that a petition for rectification of the register will lie normally after the filing of a winding up petition and before the winding up order is passed, provided that the Court will normally reject that petition if the company is already in a notorious state of bankruptcy by the time the petition for rectification was filed, and that under section 38 though a petition is the normal way of moving the Court for rectification of the register a suit also can be filed under the section either alternatively or in addition. *Kuttalingam Pillai* v. *Chinnakannu Pillai*[1] states that where on an official liquidator's application in the winding up of a company to call upon a shareholder to pay up the company's moneys in his hands an order is passed for payment allowing interest at a rate lower than what had been agreed upon by that shareholder, such an order can be appealed against only by the official liquidator and not by another shareholder though he has got the leave of the High Court granted without notice to the respondent and by a Judge other than the company Judge. *Syed Haidar Sahib* v. *Jayaram Pillai*[2] makes it clear that paying a creditor of the company especially after the commencement of the winding up proceedings cannot be deemed to be a *bona fide* transaction carried out or arising in the ordinary course of current business, and a deed assigning an asset of the company after the starting of the winding-up proceedings is therefor void under section 227 (2) and unenforceable.

PROPERTY LAW.—In *Indian Insurance and Banking Corporation* v. *Paramasivam*[3], it is pointed out that the English rule as to fixtures does not in terms apply to India, that the matter has to be determined on the intention of the parties, that in certain circumstances machinery existing on the mortgaged premises on the date of the mortgage and even machinery subsequently installed thereon may pass under the mortgage, that the degree of annexation and the purpose for which they are brought on the premises, whether for the use of the building as such or for the use of the building for some specified purpose unconnected with the building as such will be the relevant factors for consideration, that where a building subject to a mortgage in which a particular business like a distillery or theatre, etc., is carried on is sold in execution of a mortgage decree what the purchaser will get will be the building and not the fixtures. *Swaminatha Udayar* v. *Mottaya Padayachi*[4] holds that under section 54 (3) of the Transfer of Property Act delivery of possession would convey title, and that where property usufructuarily mortgaged is sold by the mortgagor to the mortgagee in discharge of the mortgage a direction by the vendor to the vendee to keep the property as absolute owner amounts to delivery of possession. In *Kamala Devi* v. *Bachulal Gupta*[5], the Supreme Court points out that while it is true that a gift becomes legally effective only when a registered instrument is executed in the manner laid down in section 123 that section does not deal with nor does it affect the power of a Hindu widow to make an alienation of a reasonable portion of her husband's estate in favour of her daughter as marriage dowry.

MADRAS ESTATES LAND ACT : In *Tanjore Palace Devasthanam* v *Estates Abolition Tribunal*[6], it is held that if portions of land in a whole village are granted in inam, the lands so granted are not constituted into an estate within the meaning of section 3 (2) (*d*) of the Madras Estates Land Act, that if subsequent to the date of the creation of the minor inam the other areas in the village are the subject of a grant the latter constitutes the grant of a whole village and therefore an estate within the meaning of section 3 (2) (*d*), *Explanation* 1, but the later grant will not affect nor be effective to convert the anterior grant of land into an estate. *Chidambaram Chettiar* v. *Ramaswami Odayar*[7] decides that on the seizure of the private lands of the Raja of Tanjore and subsequent regrant by the East India Company seven years later in 1862 of the suit lands, whatever might have been the character of the lands prior to the seizure all the previous tenures must be deemed to have been wiped out, and the regrant must be deemed to be a fresh source of title, and admissions by the tenant in

1. (1957) 2 M.L.J. 506.
2. (1957) 1 M.L.J. 141.
3. (1957) 2 M.L.J. 256.
4. (1957) 1 M.L.J. 17.
5. (1957) 1 M.L.J. (S.C.) 66.
6. (1957) 2 M.L.J. 67.
7. (1957) 1 M.L.J. 72.

leases and muchilikas executed by them should not be held to bind them where those documents themselves showed that the lands were in the continuous occupation of the defendants as tenants paying only the customary rents, and that the grant was of the whole inam village in which the suit lands lay and was therefore an 'estate' within the meaning of section 3 (2) (*d*), *Explanation* 1.

MADRAS ESTATES ABOLITION AND CONVERSION INTO RYOTWARI ACT—In *Appaswami Naidu* v. *Appaswami Naidu*[1], it is held that where under a partition arrangement zamin pannai lands were allotted subject to the liability of paying rent in perpetuity to the zaminder, the persons in possession of such lands will not be 'landholders' within the meaning of section 3 (5) of the Estates Land Act and will not be entitled to the compensation deposited under Madras Act XXVI of 1948 on the estate being taken over by Government. *Gopalaswami Ayyangar* v. *Athmanathaswami Devasthanam*[2] states that land wholly uncultivated before letting into possession cannot be said to be home-farm or private land at its inception, that any land which can be cultivated systematically will be 'cultivable land' within the meaning of the Estates Land Act and therefore ryoti till the contrary is proved. *Hariharamuthu Pillai* v. *Ramasubbalakshmi Nachiar*[3] points out that pre-settlement lands whether they were of both varams or of the melvaram only stood excluded from the estates settled on the zamindars at the time of the Permanent Settlement, and it may be taken that the income from the minor inams would not have been taken into account in arriving at the peshkush fixed for the zamindari, hence the minor inams cannot be estates under the Estates Land Act and would be outside the scope of the Madras Estates Abolition Act; also, since the Madras Act XXX of 1947 does not apply to such pre-settlement minor inams the tenants would not be entitled to the benefits of that Act by way of reduction of the rate of rent. *Ramanathan Chettiar* v. *State of Madras*[4] lays down that the onus will be on the party putting forward the case that the village is an estate, and that where there is no evidence the case must be decided on the onus of proof. *State of Madras* v. *Zakina Bivi*[5] decides that there during the currency of a lease the Government took possession of the land comprised in the lease by virtue of a notification under the Estates Abolition Act the lessee is not entitled to claim any damages from his lessor or out of the compensation amount belonging to his lessor as all leases are valid subject to the proviso mentioned in section 20 of the Act. *Venkatasubbaraya* v. *State of Madras*[6] points out that the meaning of the expression 'rent' in section 23 is rent for the use of the land held for the purposes of agriculture, and if by reason of contract between the landholder and the pattadar the latter is entitled to deduct from the amount other sums having no relationship to the use of the land for agricultural purposes the deduction cannot be claimed as against the Government. *Madras Mercantile Agencies* v. *Bashyakarlu*[7] decides that section 42 of the Estates Abolition Act does not preclude the attachment in execution of a decree of the compensation amount deposited by the Government before the Tribunal after the taking over of the estate. *Chidambaram Chettiar* v. *Venkatesa Iyengar*[8] makes it clear that though section 42 is wide and does not expressly exclude consideration of fresh rights accruing after the date of notification of an estate, the general scheme of the Act draws a dividing line and fixes the notified date as the point of time when the rights which are the subject-matter of the proceedings before the Tribunal under the Act become crystallised. It is further stated that the secured creditor referred to in the section signifies only a creditor whose security extends over the estate when it was taken over and not one who obtained a charge over the compensation amount without having had any charge or encumbrance over the estate taken over. *Raja Rajeswari Ambal* v. *District Board, Tinnevelly*[9] takes the view that the claim for maintenance referred to in section 45 (2) (*b*), etc., refers only to the maintenance or support of natural persons and does not include amounts payable

1. (1957) 2 M.L.J. 119.
2. (1957) 1 M.L.J. 104.
3. (1957) 2 M.L.J. 599.
4. (1957) 1 M.L.J. 348.
5. (1957) 2 M.L.J. 260.
6. (1957) 2 M.L.J. 162.
7. (1957) 2 M.L.J. 27.
8. (1957) 2 M.L.J. 341.
9. (1957) 2 M.L.J. 73.

towards the maintenance of property and institutions and that institutions in whose favour a charge is created over an estate or its income will only rank as a creditor and be entitled to a proportionate share of the compensation amount. *Arunchalam Chettiar* v. *Narayanan Chettiar*[1] holds that disputes referred to in the opening language of section 56 (1) would not exclude disputes earlier in origin than the notified date, that the section must be read as covering all disputes factually present after the notified date, and that the disputes which are excluded are only those in regard to which there have been binding adjudications by the ordinary Courts before that date and matters pending before other authorities before the notified date. *Chidambaram Chettiar* v. *Muhammad Aliar Rowther*[2] lays down that since section 56 (1) (*c*) specifically entrusts the determination of the dispute as to who among the rival claimants was entitled to the grant of patta to the Settlement Officer, the decision of such dispute was excluded from the competence of other authorities and the Estate Manager has no power to decide the matter. *State of Madras* v. *Kasi Mohamed*[3] is of the view that it is doubtful if a notification by the Government under the Madras Estates Land (Reduction of Rent) Act can be held to be a proceeding in a civil Court within section 64-A of the Estates Abolition Act.

Madras Agriculturists Relief Act—In *Krishnamoorthy* v. *Devanadhaswami Devasthanam*[4], it is pointed out that renewal of a mortgage in favour of the Devasthanam by a mortgagor after becoming its trustee is a re-investment of the trust money, and the liability thereunder is one arising out of a breach of trust, and is therefore outside the provisions of Act IV of 1938. *Thangarasu Pillai* v. *Sivarama Iyer*[5] decides that a usufructuary mortgage is also a debt within the meaning of the Act liable to be scaled down under section 9-A, and though generally speaking the mortgagee's right is to retain possession till redemption the absence of personal liability of the mortgagor or of right to the mortgagee to sue for sale does not take away the applicability of section 19-A of the Act. *Konthalavalli Achi* v. *Ayyathurai Odayar*[6] points out that section 9-A (10) as amended is in the form of an exception to the main provision in the section, that the devolution by transfer *inter vivos* referred to in section 9-A (10) (ii) (*a*) cannot include transfers by operation of law as in Court sales, and hence a Court auction-purchaser is not entitled to the benefit of exemption under the provision, and the creation of a sub-mortgage by the mortgagee is not a transfer of the mortgagee's interest within the meaning of section 9-A (10) (ii) (*b*). *Jeeyappa Iyengar* v. *Srinivasan*[7] states that section 19-A would not apply to a case where the creditor himself declares that the mortgage has been completely wiped out by a subsequent agreement of sale and that there is no debt outstanding.

Hindu Law.—In *Palvanna Naidu* v. *Annamalai Ammal*[8] it is held that a father in an undivided Hindu Mitakshara family can within reasonable limits make a gift of joint family immovable property to his daughter on the occasion of her marriage and when she is departing from her parental home, that the obligation may even be fulfilled later, without point of time, not only by the father but also by his widow or son taking over the estate from the father, but that the father has no power to make a gift to his daught r by purporting to make a settlement for the fulfilment of an obligation not actually arisen or not possibly arising at all for fulfilment. *Canara Banking Corporation* v. *South Indian Bank*[9] is of the view that the rule that the father or manager has no power to impose upon a minor of the family the risk and liability of a new business started by him will not apply in the case of families whose hereditary avocation is trade and in any event the rule cannot apply where a sole-surviving coparcener starts a new business at a time when there are no minors. *Subramanian* v. *Kalyanasundaram Iyer*[10] lays down that property which a Hindu coparcener obtains at the time of partition is not his separate property within the meaning of section 3 (1) of the Hindu Women's Rights to Property Act, 1937, but

1. (1957) 1 M.L.J. 183.
2. (1957) 1 M.L.J. 244.
3. (1957) 1 M.L.J. 1.
4. (1957) 2 M.L.J. 411.
5. (1957) 2 M.L.J. 461.
6. (1957) 1 M.L.J. 112.
7. (1957) 2 M.L.J. 262.
8. (1957) 1 M.L.J. 238.
9. (1957) 2 M.L.J. 502.
10. (1957) 1 M.L.J. 250.

must be deemed to be an interest in joint family property by virtue of section 3 (2) of the Act in which his widow would have an interest. In *Ramalingam Pillai* v. *Ramalakshmi Ammal*[1], it is held that a widow who is entitled to the share of her husband in joint family property by virtue of section 3.(2) of Act XVIII of 1937 can question the alienation of any such property by the sole surviving male coparcener in a suit for partition, and that the mere fact that she has not obtained partition does not mean that her rights are at the mercy of the surviving coparceners of her husband. *Thangavelu Asari* v. *Lakshmi Ammal*[2] states that it is only where a widow is in enjoyment of rights and interests of a limited character that there will be forfeiture on her remarriage by reason of section 2 of the Hindu Widows Remarriage Act, but not where she has taken rights absolutely. In *Kamala Devi* v. *Bachulal Gupta*[3] the Supreme Court points out that the Hindu widow has power to alienate a reasonable portion of her husband's estate in favour of her daughter as marriage dowry sometime afte the marriage to fulfil a promise made earlier as a religious act conducive to the spiritual benefit of her husband. *Deoki Nandan* v. *Murlidhar*[4] lays down that the test to decide whether a religious endowment is public or private is to see who the beneficiaries thereunder are, whether specific persons or the general public, and that when a temple is built, idol installed, and properties endowed the true beneficiaries are not the idols but the worshippers. n *Dasarathrami Reddi* v. *Subba Rao*[5] the Supreme Court states that where a dedication is complete a trust in favour of a public religious charity is created, that if the dedication is partial a charge in favour of the charity alone arises and stands attached to and follows the property which retains its original and secular character, and that whether or not a dedication is complete will be a question of fact to be determined in each case on its facts.

COURT-FEES ACT.—In *Rengachari* v. *Somasundaram Pillai*[6] it is pointed out that where the entire decree for redemption of a mortgage is sought to be set aside the proper Court-fee payable would be on the principal money expressed to be secured by the instrument of mortgage. *Ranganatham* v. *Jaffars*[7] states that Court-fees in the State are now collected on the strength of the Madras Court-Fees and Suits Valuation Act, 1955, that section 73 of that Act does not empower the Government to remit the fees payable by a particular individual in a particular case, that the Government in appropriate cases can remit the fees payable by a class of people, but the classification must be reasonable, based upon some real and just relation to the subject sought to be achieved, and that a notification issued by Government remitting fees and charges payable by the ex-workmen of the Madras Electric Tramways, Ltd., on plaints, applications, etc., for recovery of amount under award of the Industrial Tribunal is *ultra vires* the Government as such workmen cannot be described to be a class. *Sreeramulu* v. *Nagarathnamma*[8] decides that section 7 (iv) (*f*) of the Court-fees Act, 1870, as amended in Madras entitles a plaintiff appealing from a final decree in a suit for accounts to value his appeal notionally, but the Appellate Court has power to direct the plaintiff-appellant to state the amount involved in each objection taken by him; also section 7(iv) (*f*) specifically applies only to a plaintiff but does not extend the immunity to a defendant appealing. *Krishna Iyer* v. *Kailasanathar Koil Devasthanam*[9] holds that where a decree for mesne profits directs payment of a fixed sum per month and the appellate Court staying execution directed the deposit of the amount in Court allowing the decree-holder to withdraw the same no Court-fee will be payable ordinarily on the amounts withdrawn inasmuch as Court fee can be recovered only when a decree is executed. *North Arcot District Central Co-operative Stores, Ltd.* v. *Collector of North Arcot*[10] takes the view that where separate orders were placed by the Collector for the supply of goods to four districts without a parent contract forming a basis for a common cause

1. (1957) 2 M.L.J. 382.
2. (1957) 2 M.L.J. 132.
3. (1957) 1 M.L.J. (S.C.) 67.
4. (1957) 1 M.L.J. (S.C.) 28.
5. (1957) 2 M.L.J. (S.C.) 175.
6. (1957) 1 M.L.J. 60.
7. (1957) 1 M.L.J. 188.
8. (1957) 1 M.L.J. 33.
9. (1957) 1 M.L.J. 148.
10. (1957) 1 M.L.J. 58.

of action section 17 of the Court Fees Act would apply as there were four distinct subjects and four distinct causes of action.

LIMITATION ACT.—In *Viswanathan Chettiar In re*[1], it is pointed out that section 5 of the Limitation Act will apply to excuse delay in the presentation of an application for special leave to appeal from an order of acquittal and that section 29 (2) comes into operation only when the special law prescribes a period different from the period prescribed by the First Schedule to the Limitation Act which is not the case here. *Sarvotuma Kamath* v. *Abdulla Beary*[2], lays down that where immovable property is transferred by way of usufructuary mortgage and the mortgagee subsequently transfers a portion of the property to another by way of a usufructuary mortgage not *qua* mortgagee but as owner under a sale-deed obtained subsequent to the earlier mortgage, a suit to recover possession of the portions so transferred by him would be governed by Article 134, and on the language of that article there is no scope for importing into it ideas of equity and fairplay. *Patteri Pakkar* v. *Chengatiye Kombi Ammad*[3], states that a person who has been dispossessed and who sues for possession must not only establish his title but should also prove his possession within 12 years prior to the suit and the fact of the negativing of the defendant's case of being let into possession by a third party, a predecessor in title of the plaintiff, does not shift the onus to the defendant of proving adverse possession, and it is Article 142 and not Article 144 that applies to such a case. In *Kamakshi Ammal* v. *Arukkanni Ammal*[4], it is pointed out that Article 180 must be read not only with the provisions of Order 22, rule 92 (1) of the Civil Procedure Code but also with other material sections and orders of the Code, and it is only when proceedings started in the course of execution come to a final determination that it can be said that a Court sale has become absolute; hence, where the decree-holder filed a suit to set aside an order allowing a claim and the suit terminated in a compromise, an application by the decree-holder under Order 21, rule 95, Civil Procedure Code, made within three years from the disposal of the suit will be within time. *Subramaniam Chettiar* v. *Muthiah Pillai*[5], states that an application for a final decree by the plaintiff-mortgagor who has obtained a preliminary decree for redemption can be made only on payment or deposit of the amount fixed by the preliminary decree and limitation is three years from the date of the deposit under Article 181. *Kannappa Chettiar* v. *Manickam Chettiar*[6], decides that an application supported by a sworn affidavit though not in form a verified execution petition may still be taken to be such as to constitute a step-in-aid of execution within Article 182 (5) for calculating the period of limitation. *Veda Goundan* v. *Arunachalam Chettiar*[7], states that an application by an auction-purchaser to bring on record legal representatives of the judgment-debtor before confirmation of sale where the validity of the execution is not in dispute will not come within Article 182.

INSOLVENCY.—In *Basker and Co.* v. *Veerasikku Goundar*[8], it is held that under section 9 of the Provincial Insolvency Act a petition for the adjudication of the debtor as insolvent cannot be maintained by a creditor unless the debt alleged to be owing to him had come into existence prior to the date of the commission of the act of insolvency on which the petition is founded, and a claim for refund of advance paid under a contract will be a liquidated sum within the meaning of section 9 (1) (*b*) notwithstanding the fact that the cause of action is the same as that on which damages could be claimed for breach of contract. *Sri Lakshmi and Co.* v. *Swaminatha Iyer*[9], takes the view that where in execution of a decre for specific performance obtained against the debtor prior to the filing of an application for the adjudication of the debtor the Court as representing the debtor executed a mortgage in favour of the decree-holder after the filing of the insolvency petition, and later the debtor was adjudicated, the mortgage will not bind either the debtor's estate or the Official

1. (1957) 1 M.L.J. 50.
2. (1957) 1 M.L.J. 170.
3. (1957) 2 M.L.J. 34.
4. (1957) 1 M.L.J. 180.
5. (1957) 1 M.L.J. 147.
6. (1957) 2 M.L.J. 105.
7. (1957) 2 M.L.J. 388.
8. (1957) 2 M.L.J. 582.
9. (1957) 2 M.L.J. 398.

Receiver inasmuch as under section 28 (7) the insolvency will relate back to the date of the petition and the execution of the mortgage by the Court is not by it as custodian of the insolvent's estate but as representing the debtor and therefore it would be like a mortgage executed by the debtor himself after adjudication. *Official Receiver of Salem* v. *Chinna Goundan*[1], holds that mere recital that consideration had been received when in fact it had not been received is not enough to show that no consideration was intended to pass and that the document was a bogus one executed gratuitously, and a careful scrutiny should be made of the circumstances to see whether the purchaser is a lucky purchaser or a fraudulent purchaser.

Civil Procedure Code.—In *Kokila* v. *Rajabather*[2], it is pointed out that the dismissal of a prior suit for partition by a person claiming to be the legitimate son of the last male-holder does not operate as *res judicata* so as to bar a subsequent suit by the same plaintiff for partition claiming as illegitimate son, that since the joining of such claim would have certainly led to confusion and embarrassment in the prior suit the ground of the claim in the second suit cannot be said to be a matter which ought to have been made a ground of attack in the former suit so as to attract the operation of *Explanation IV* to section 11, Civil Procedure Code; nor will the second suit for the same reason be barred by Order 2, rule 2. *Official Receiver of Salem* v. *Chinna Goundan*[3], is of the view that under section 34 interest on an unsecured debt at 12 per cent. per annum cannot be regarded as unreasonable. *Kunhiraman* v. *Madhavan Nair*[4], decides that an order for arrest passed by a Court of original jurisdiction in execution of a decree of a Small Cause Court which had been transferred to it for execution in its original side is not open to appeal under section 47 but only to revision under section 25, Provincial Small Cause Courts Act. *Govinda Padayachi* v. *Kannammal*[5], points out that although an order passed in execution dismissing a claim petition does not fall under section 47 and is not subject to appeal, when an appeal is actually preferred and disposed of by the lower Court, a second appeal on the order of the lower appellate Court is competent and has to be dealt with on the merits. *Srinivasa Sastri* v. *Venkatarama Ayyar*[6], holds that where the order of transmission of a decree for execution is passed after the expiry of 12 years from the date of the decree, an execution petition filed within 12 years in the transferee Court but before the order of transfer is made will not save the decree-holder from the bar of section 48. In *Munuswamy* v. *Viswanatha Nair*[7], it is held that the exemption from attachment under section 60 (*h*) covers only the case of labourers who earn their living by personal labour in occupations which require no skill or previous education; hence the bonus payable to a labourer if it does not form part of the wages is not exempt from attachment. *Srinivasan* v. *Padmasini Ammal*[8], takes the view that dearness allowance given to an employee will be part of his salary unlike travelling allowance, house allowance, etc., which are meant for particular occasions or areas and hence in deciding whether an employee's salary is attachable in execution of a decree the quantum of the salary is to be computed inclusive of the dearness allowance where such allowance has not been exempted from attachment. *C. Subramaniam* v. *Pakkiriswami Vandayar*[9], decides that section 63 would apply to enable a superior Court to adjudicate on claims of rival attaching decree-holders only where there have been attachments in execution of decrees of more Courts than one, that where the superior Court has only made an order of attachment before judgment and no execution has been taken in pursuance of the decree made in the suit in the superior Court which made the attachment before judgment it cannot be said that the superior Court has attached the amount in execution, and section 63 cannot apply and would not give power to the superior Court to adjudicate on the claim of the attaching decree-holder in the inferior Court. *Sundaralingam Chettiar* v. *Nagalingam Chettiar*[10], holds that a suit for a declaration that a person in office as trustee of a public trust is not entitled to be so and that

1. (1957) 2 M.L.J. 414.
2. (1957) 2 M.L.J. 128.
3. (1957) 2 M.L.J. 412.
4. (1957) 2 M.L.J. 28.
5. (1957) 1 M.L.J. 201.
6. (1957) 2 M.L.J. 144.
7. (1957) 2 M.L.J. 400.
8. (1957) 2 M.L.J. 305.
9. (1957) 1 M.L.J. 9.
10. (1957) 2 M.L.J. 634.

the assumption of office by him is invalid does not fall within the scope of section 92, and the removal of a trustee for which the section provides contemplates only *de jure* trustees and does not include persons whose right to hold such office is itself challenged. *Sri Lakshmi and Co.* v. *Swaminatha Iyer*[1], states that the High Court will not under section 100 reverse a decision on a question of fact unless the lower Court's conclusion is perverse, or unreasonable though the High Court may feel considerable suspicion about the evidence and might arrive at a contrary finding if it were dealing with the case as a first appeal. *Venkatammal* v. *Muthukrishna Naidu*[2], points out that where an original petition for leave to sue as pauper has been finally dismissed for non-payment of Court-fee within the time allowed after refusing leave to sue as pauper, the applicant's remedy is only to file a regular appeal against the decree rejecting the plaint and not a revision petition against the order of refusal of leave to sue as pauper. In *Kannan Nambiar* v. *Krishnan Nambiar*[3], it is held that a *bona fide* third party purchaser at a sale held under a Court's decree or order which is subsequently reversed is not affected by the reversal and the remedy of restitution does not lie against him under sections 144 and 151. *Ibrahim Haji, In re*[4], holds that the discretion of the Court in regard to addition of parties under Order 1, rule 10 (2) has to be exercised in a reasonable manner so as not to cause inconvenience or embarrassment and where the persons sought to be impleaded have no subsisting right or interest in the subject-matter of the suit and are sought to be impleaded by the defendants only for getting their evidence it would not be proper to make them parties on the mere ground that the defendants would be driven to the necessity of filing a separate suit against those parties. *State of Madras* v. *Subramania Pandara Sannadhi*[5], expresses the view that where a suit is in effect to set aside the finding of the Tribunals under the Estates Abolition Act that the suit lands are an estate there cannot be a final adjudication unless the ryots of the village are also before the Court and the plaintiff should therefore bring them on record under Order 1, rule 8. *Kaliammal* v. *Ramaswami Goundar*[6], lays down that when a minor plaintiff attains majority he must be given an opportunity to make even drastic amendments to the plaint according to what he considers to be the correct and relevant allegations inasmuch as at the moment he attains majority he takes the responsibility for his actions. *Nanjan* v. *Solai*[7], points out that without following the procedure in Order 8, rule 9, if a Court of appeal calls for additional written statements in an appeal without a petition therefor and without knowing even what such statements would contain and asks the other side to file by a certain date a reply to such written statements yet to be filed and posts the appeal for hearing on the assumption of taking the additional written statements into consideration it would be opposed to law. *Subulal Sahib* v. *Perianna Pillai*[8], decides that an application under Order 8-A, rule 1, cannot be dismissed on the ground of absence of privity of contract between the plaintiff and the third party. *Sankara Pandia Thevar* v. *Syed Abdul Rahman Rowther*[9], takes the view that where a person against whom an *ex parte* decree has been passed filed a suit subsequently for a declaration that the decree was not binding on him and the decree was set aside, the question whether the plaintiff in the original suit could apply for a fresh disposal of his suit will depend on the facts and circumstances of each case. *Subramania Chettiar* v. *Ponnuswami Chettiar*[10], states that simiultaneous execution both against the property and person of the judgment-debtor is allowed under Order 21, rule 30, but is subject to the discretion of the Court under Order 21, rule 21, and that according to Order 21, rule 40, if the Court is satisfied on the evidence that the case falls within any of the clauses in the proviso to section 51 the Court has to record its reasons in writing that the judgment-debtor should be committed to prison for one of the reasons set out therein. *Muthukamakshi Chettiar* v. *Shanmuga Nadar*[11], holds that where execution

---

1. (1957) 2 M.L.J. 398.
2. (1957) 2 M.L.J. 623.
3. (1957) 1 M.L.J. 59.
4. (1957) 1 M.L.J. 167.
5. (1957) 1 M.L.J. 206.
6. (1957) 2 M.L.J. 164.
7. (1957) 2 M.L.J. 601.
8. (1957) 2 M.L.J. 55.
9. (1957) 2 M.L.J. 101.
10. (1957) 1 M.L.J. 208.
11. (1957) 2 M.L.J. 412.

of a decree obtained against a person in his personal capacity is sought to be executed against his share of the assets in a partnership it is not necessary to file a separate suit for a declaration that the judgment-debtor whose assets in the partnership are sought to be attached is a partner and it is the duty of the executing Court to go into the question and follow the procedure laid down in Order 21, rule 49 (2) in case the finding is that he is a partner. *Govinda Padayachi* v. *Kannammal*[1], points out that Order 21, rule 57, as amended in Madras will come into play only when an execution petition is dismissed for default of the decree-holder and it is only in such a case that the attachment will come to an end whether there is or there is not an order of Court terminating the attachment, so much so, an order on the Execution Petition 'not pressed : attachment to continue' cannot be construed as one dismissing the petition for default of the decree-holder within the meaning of Order 21, rule 57, but is one keeping the application in suspense for the time being to be renewed at a later stage. *Kuppammal* v. *Devendra Iyer*[2], states that where the judgment-debtor and the decree-holder differ regarding the valuation of the property sought to be sold in execution the proper procedure for the Court would be to mention both the figures in the sale proclamation, and the Court cannot fix both the figures as the upset price, nor is it bound to hold an enquiry as regards the value and give such valuation in the proclamation of sale. *Chinnappa Chetty* v. *Gopala Chetty and Bros.*,[3] lays down that the amendment of Order 21, rule 89, in 1936 enables even a purchaser from the judment-debtor to apply under the rule but does not mean that he is the only person who could apply under the rule; hence, a judgment-debtor even if he had sold his property privately to another after the sale of the same in execution is still entitled to apply under Order 21, rule 89, to set aside the execution sale as he will still be a person holding an interest in the property. *Veda Goundar* v. *Arunachalam Chettiar*[4], takes the view that confirmation of sale under Order 21, rule 92, does not require an application by the auction-purchaser; confirmation is a statutory obligation of the Court, and no question of limitation can arise in such a case. *Ethirajulu Naidu* v. *Panikkar*[5], states that under Order 37, rule 4, no restrictions are placed on the Court's power to set aside a decree and grant leave to defend the suit when such an application has been preferred by a party who has entered appearance in pursuance of a notice under rule 2 but as against whom an *ex parte* decree has been passed.

CRIMINAL LAW.—In *Chandrasekharan*, In re[6], it is held that to fall within the mischief of section 292, Indian Penal Code, the test of criminality is whether the matter complained of tends to deprave and corrupt those whose minds are open to such immoral influences and except in cases of scientific treatises which can be justified on their own circumstances the motive or intention of the writer or publisher is immaterial if the publication is in fact obscene. *Murugan*, In re[7], points out that where a wife is not merely in adulterous intimacy with another but swears openly in the face of her husband that she would persist in such conduct and abuses her husband for remonstrating, and the husband being thus provoked inflicts injuries on her resulting in her death it may be regarded as a case of grave and sudden provocation within the meaning of section 300; the standards applicable to societies in Western countries where such lapses are looked upon with greater latitude and are deemed to be redressible by the award of damages are not applicable in India, and the gravity of the provocation is a psychological problem depending on the circumstances that prevail at the given situation.

CRIMINAL PROCEDURE CODE.—In *Ramachandran*, In re[8], it is pointed out that omission by the prosecution to examine in the Sessions Court eye-witnesses to the occurrence who were examined in the Committing Court and were not treated as hostile is a serious defect in the conduct of the prosecution. *Yesudasan* v. *Guruswamy*[9], declares that the object of section

1. (1957) 1 M.L.J. 201.
2. (1957) 2 M.L.J. 134.
3. (1957) 2 M.L.J. 269.
4. (1957) 2 M.L.J. 388.
5. (1957) 1 M.L.J. 131.
6. (1957) 2 M.L.J. 559.
7. (1957) 2 M.L.J. 9.
8. (1957) 2 M.L.J. 126.
9. (1957) 1 M.L.J. 353.

132, Criminal Procedure Code, is to afford protection to public servants acting in discharge of their duties from being unnecessarily prosecuted without reasonable cause which is ensured by the insistence of prior sanction of the State Government, and such protection will be rendered nugatory if the onus is thrown on the Police Officers to prove in a trial that they acted under the provisions of Chapter IX of the Code before they could seek the protection of prior sanction of the State Government. *Pinto* v. *Fernandez Bai*[1], holds that though a Magistrate's order passed under section 147 is subject to a subsequent decision of a civil Court the mere fact that the rights of parties in regard to the matter in dispute have become crystallised by a subsequent decision of the civil Court setting aside the Magistrate's order does not by itself have the effect of varying or altering also the order for costs under section 148 made by the Magistrate in the earlier criminal proceedings. *Ramachandran*, In re[2], decides that the right of an accused to get copies of statements made by him under section 162 during the course of investigation is a valuable right, that if such copies are not furnished an inference of prejudice to the accused at the trial will arise, that if the original statements are made in Tamil and recorded in that language the statements should be preserved and copies furnished to the accused if he applies for them, and that if such statements are proved to have been destroyed prejudice can be presumed and the accused aquitted. In *Narayana Rao* v. *State of Andhra Pradesh*[3], the Supreme Court holds that while Magistrates have to be circumspect in conducting committal proceedings to see that accused persons are not handicapped in their defence by any omission on the part of the police to supply the necessary copies, it cannot be said that non-compliance with section 173 (4) read with section 207-A (3) has necessarily the result of vitiating those proceedings and the subsequent trial, and the omission is an irregularity which could be cured under section 537 of the Code. *Ramanathan*, In re[4], states that the prosecution must decide before the commencement of the enquiry what witnesses it would examine and mention their names in the charge-sheet filed under section 173 and furnish or cause to be furnished copies of the statements of those witnesses recorded under section 162 and if this is not done the prosecution cannot call any witness it likes subsequently and spring a surprise on the accused. *Public Prosecutor* v. *Parasuram Prabhu*[5], points out that merely because copies of statements made by witnesses to the police were not furnished to the accused under section 173 (4) read with section 251-A before the commencement of the enquiry or trial and only translations of the statements as entered in the case diary were furnished it does not mean that the original statements are not to be read by the accused at a later stage or that the Court has no power to insist on the furnishing of such statements to the accused, and it is the duty of the Court to have them furnished to the accused and opportunity given to cross-examine any witnesses already examined relating to those statements. *Ramaswami Nadar* v. *Viswanathan*[6], lays down that section 200 as amended is mandatory and it is obligatory on the part of the Magistrate to examine not only the complainant but also the witnesses who are present in Court on oath, and the substance of the examination must be reduced to writing and signed by the complainant and the witnesses and also by the Magistrate, and the Magistrate can apply section 203 only if after all these he finds sufficient ground for not proceeding with the case, and the dismissal of a complaint under section 203 without adopting the procedure under section 200 is not valid. *Kadan Kunhikannan*, In re[7], holds that it cannot be said that where an accused has denied the offence when he was first questioned he cannot plead guilty later, that under section 244 if the accused did not in the first instance admit his guilt after the prosecution witnesses have been examined he must be heard, and then if he admits his guilt there is no reason why he should not be convicted especially when he has not cross-examined the prosecution witnesses at all. *K. K. Swami*, In re[8], decides that where in a prosecution on a charge against two accused persons, one of them

1. (1957) 1 M.L.J. 134.
2. (1957) 2 M.L.J. 126.
3. (1957) 2 M.L.J. (S.C.) 139.
4. (1957) 1 M.L.J. 195.
5. (1957) 2 M.L.J. 654.
6. (1957) 1 M.L.J. 157.
7. (1957) 1 M.L.J. 151.
8. (1957) 1 M.L.J. 19.

pleads guilty the Court should proceed under section 271 (2), dispose of the case against him, remove him from the dock, and then empanel a jury in a case triable by jury and try the other accused keeping away from the members of the jury all knowledge of the plea of guilty of the other accused; that when this procedure is not followed and the case proceeds as if the accused pleading guilty is also on trial and he too is examined under section 342 and his statements are taken into consideration against the other accused it amounts to a disregard of section 271 (2) resulting in prejudice to the accused pleading not guilty and the trial is vitiated and cannot be cured. *Ganapathi Muthiriyar* v. *Narayanaswami*[1], points out that the High Court has power to interfere in revision under section 435 even in regard to orders passed by a Magistrate in the course of administration of properties attached under section 146 (1) though the High Court will be extremely reluctant to exercise its revisional power in the absence of compelling reasons. *Soundarajan and Co.* v. *Sankarapandia Nadar*[2], holds that under section 476 the proceedings before the Official Assignee are as a matter of fact in relation to the proceedings in the Court dealing with the insolvency petition, and a complaint may therefore be directed to be laid for an offence of giving false evidence under section 193, Indian Penal Code. *Ramanathan*, In re[3], lays down that witnesses other than those whose names are mentioned in the charge-sheet may, under section 540, Criminal Procedure Code, in the exercise of the Court's judicial discretion, be examined as Court witnesses.

---

1. (1957) 2 M.L.J. 62.
2. (1957) 2 M.L.J. 348.
3. (1957) 2 M.L.J. 195.

UNIVERSITY LIBRARY. LAW COLLEGE

THE
MADRAS LAW JOURNAL

I] APRIL [1958

NOTES OF INDIAN CASES.

PARVATHY AMMAL *v.* GOPALA GOUNDAR, (1956) 2 M.L.J. 468.

It is held in this case that the omission to perform Saptapadi is not material where the essential ceremony of tying the *thali* has been done; and where the parties have gone through some form of marriage and have been living as husband and wife the general presumption in favour of a valid marriage will attach. In *De Thoren* v. *Attorney-General*[1], Lord Cairns, L.C., remarked: "The presumption of marriage is not the same as the presumption raised with regard to other facts, which may be presumed either the one way or the other; the presumption of marriage is something much stronger; from cohabitation with reputation a marriage is to be presumed unless there is strong and cogent evidence to the contrary". In *Sastry Velaider Aronegary* v. *Sembecutty Vaigalie*[2], the wife had admitted in cross-examination that "other ceremonies were necessary for the marriage but were not performed". Sir Barnes Peacock nevertheless thought that it only meant that the witness was probably better acquainted with what ceremonies were usually performed than what were actually essential for the legality of the marriage, that it was evident from the parties going through the form of marriage that they intended to be married, and if they were not married according to the strict custom it was not in consequence of their wish that it should be so. In the particular case the performance of other ceremonies could not be done on account of disturbances caused by persons who wanted to obstruct the marriage. Saptapadi is one of the important ceremonies of a sastraic marriage among the Hindus. According to Manu the marriage becomes final and irrevocable only on performance of Saptapadi. According to a text of Yama the marital relationship arises only by the performance of ceremonies commencing with Panigrahana and ending with Saptapadi. In particular communities customs have developed dispensing with the need for performing some of the ceremonies. In *Audikesavalu* v. *Ramanujam*[3] a custom dispensing with the performance of Vivaha Homa and Saptapadi in the community to which the parties belonged was held to be established and the validity of the marriage was affirmed. Even the tying of a *thali* in the presence of friends and relatives before an idol in a temple was considered to constitute a valid marriage where the usage of the particular community had dispensed with other ceremonies, In re *Ponnuswami*[4]. The practice of tying a *thali* as of the essence of a Hindu marriage marks a later evolution in the marriage law of the Hindus. It is considered in many communities as being even more important than performance of ceremonies like Homa or Saptapadi. In *Thirumalai Naicker* v. *Ethirajamma*[5], the Court had to consider the effect of the tying of a *thali* followed by the living of the parties as man and wife and their being received as a married pair. The parties were Nayakars. The woman was a widow with a son by her first husband. She married again and at the time of the litigation had two surviving children of the second alliance. The evidence

1. L.R. (1876) 1 A.C. 686.
2. L.R. (1881) 6 A.C. 364 (P.C.).
3. (1909) I.L.R. 32 Mad. 512.
4. (1950) 2 M.L.J. 200.
5. (1946) 1 M.L.J. 438.

as to ceremonies was that in the centre of the courtyard a lamp was lit, a purohit officiated, and a *thali* known as *naduveetu thali* was tied. The Court held that there was not enough evidence to find that this form of marriage was recognised by a custom among the Nayakars. The Court preferred to rest its conclusion on "the general presumption which ought to be drawn in favour of a valid marriage when the fact of the celebration of some form of marriage is established" there being no evidence showing that that form was invalid. In other words, where some form of marriage has been gone through, continuous cohabitation and repute that the parties are man and wife will raise a presumption of valid marriage. In the instant case, the evidence showed that ceremonies like Vigneswara Pooja, Kalasa Pooja and Mangalya Pooja were performed and there was the tying of the *thali*. It also showed that ceremonies like Pada Pooja, Homam, Ammi Mithitha and Saptapadi were not performed. It was also found that there was no custom of the community that Saptapadi need not be performed. The learned Judge was impressed by the fact that the tying of the *thali* has been regarded as an essential incident of the marriage, that there is no decision holding that the mere omission to perform Saptapadi will invalidate a marriage, and that in any event when there is the tying of the *thali*, non-performance of the Saptapadi is not fatal to the validity of the marriage. It is debatable whether in view of the sastraic injunction that marital relationship arises only on the performance of the ceremonies commencing with the Panigrahana and ending with Saptapadi, the marriage would be valid according to the sastras in spite of the failure to perform Saptapadi, or whether the *factum valet* doctrine could apply to the case. But, as pointed out, though there was no custom of the community recognising the form in which the marriage in question was performed, still, the general presumption of a valid marriage may be drawn on the basis of continued cohabitation and repute. This view is in conformity with the policy behind section 7 of the Hindu Marriage Act, under which the performance of ceremonies seems to be optional with the parties, and where they decide to have ceremonies the marriage may be solemnised in accordance with customary ceremonies of either of the parties to the marriage.

MANICKA GOUNDAN *v.* ELUMALAI GOUNDAN, (1956) 2 M.L.J. 536.

This case deals with a question on which there is little direct authority. The principles of the Specific Relief Act concerning specific performance are merely a crystallisation into statutory form of an equitable remedy as developed in England. A Court is not bound to grant specific performance in every case where an agreement to sell has not been carried out in its entirety. Laches of the vendee or fraudulent conduct on his part may well disqualify him for purposes of such relief. Where an agreement to sell has been followed up by the execution of a regular sale deed the question has been raised whether in the event of failure to have the sale deed registered a suit for specific performance of the agreement to sell will be competent. Two extreme views have been taken. Some decisions have held that a party will in no circumstance have a right to seek specific performance of the agreement when once a document has been executed in pursuance of the agreement though the document is not registered. Some other decisions have held that a party to an agreement can compel the other party to give specific performance so long as no document has been registered. In *Venkataswami* v. *Kristayya*[1], there was an agreement to transfer a mortgage and in pursuance of it the defendant duly executed a deed but it was not registered. The plaintiff sued to have a fresh deed executed and registered. It was held that the proper course for the plaintiff was to have exploited the remedy available to him under the Registration Act for that purpose and followed it up by a suit under section 77 if he had failed to obtain his rights by such proceedings. The conclusion of the Court was that "such a suit will not lie on the general principle that, when a statute creates a right or an obligation and provided a method of enforcing it that method and no

1. (1893) 3 M.L.J. 169 : I.L.R. 16 Mad. 341.

the remedy at Common Law, must be followed". In *Palani Goundan* v. *Paramasiva Goundan*[1], the Registrar had refused to register a sale deed on the ground of non-presentation of the document for registration within four months of its execution under section 34. The Court held that in those circumstances the proper remedy was to bring a suit to compel registration and no suit for execution of a fresh document by the vendor will lie. In *Sanga Thevar* v. *Thanukodi Ammal*[2], it was stated that when once an oral contract has become executed and has taken the shape of a document there is no more any scope for enforcing the oral contract between the parties, and the remedy open to the aggrieved person is only to resort to the procedure prescribed by section 77 of the Registration Act. Relaxation of the principle laid down in these cases has been permitted where the document executed in implementation of the contract had been accidentally lost, or stolen or destroyed. In *Nynakka Routhen* v. *Vavana Mahomed Routhen*[3], an instrument of sale was executed on August 9, 1866 and shortly thereafter was destroyed accidentally by fire except for a charred fragment. On 13th November, the District Registrar refused to register what was legible on the fragment. It was held in a suit to compel the defendant to execute another instrument to the same effect as that which had been destroyed that secondary evidence of the contents was admissible and that the defendant could be compelled to execute a fresh instrument of sale. In *Chinna Krishna Reddi* v. *Doraiswami Reddi*[4], a document of conveyance was executed but before it could be registered the vendor procured the theft of the document and concealed it for the purpose of preventing the registration thereof. The plaintiff was in the circumstances held entitled to specific performance and to have a fresh document executed and registered. In the course of his judgment Benson, J., observed : "The present case stands on a totally different footing. In it the first defendant fraudulently made away with the document after its execution and before its registration. It was therefore impossible for the plaintiff to register it. In such a case the plaintiff is clearly entitled to have a fresh document executed and registered just as he would be entitled, if, after execution, the document had been accidentally lost or destroyed". The Allahabad, Calcutta and Patna High Courts have adopted a different line of approach to the question whether when once the conveyance has been executed in pursuance of the contract the plaintiff can, so long as the document has not been registered, bring a suit for specific performance. In *Amerchand* v. *Nathu*[5], a sale deed had been executed, but the executant, a lady, had refused to register it. No suit was brought for the compulsory registration of the document. Nevertheless it was held that the plaintiff was entitled to specific performance. In *Surendra Nath Nag Chowdhury* v. *Gopal Chunder Ghosh*[6], Mukherjee and Carnduff, JJ., observed: "Although a document which has been executed, is inoperative in law and wholly ineffectual to create title in the intended lessee, it is nevertheless evidence of a valid agreement to execute a lease and may consequently form the foundation for an action for specific performance." The argument was that the undertaking of a person agreeing to transfer immovable property is to do everything whereby an operative agreement in law can be effected, that he has not done everything if he has failed in an instrument where the obligation is cast upon him to obtain its registration, and therefore a step in the creation of the legal relation of transferor and transferee being wanting one can compel the person who has not taken that step to take it. In *Nasiruddin Midda* v. *Sidhoo Mia*[7], one of the parties to a document refused to acknowledge the right to have it registered. The plaintiff thereupon sued to enforce registration and alternatively for specific performance. After rejecting the first claim as barred under section 77 of the Registration Act, the Calcutta High Court observed apropos of the alternative claim : "As regards the alternative claim to enforce specific performance of the agreement to sell there was really no answer to the suit. Although the vendors had executed the document, they could not be deemed to have completely performed their part of the agreement. The agreement was in essence not merely to execute a conveyance which

1. (1896) 6 M.L.J. 263.
2. (1952) 1 M.L.J. 620.
3. (1869) 5 M.H.C.R. 123.
4. (1897) I.L.R. 20 Mad. 19.
5. (1910) 7 All. L.J. 887.
6. (1910) 12 Cal. L.J. 464.
7. (1918) 44 Ind. Cas. 361.

until registered would be inoperative in law to transfer the full title from themselves to the plaintiff as purchaser. Such title could be transferred only by means of a registred instrument; consequently the execution of a conveyance not followed by registration could not be regarded as fulfilment of the contract ". All these decisions were fully considered in *Satyanarayana* v. *Chinna Venkata Rao*[1]. There, on the vendor denying execution of the sale deed, the Sub-Registrar refused to register the deed presented by the purchaser for registration. It was held that the sole remedy of the purchaser was to file a suit as provided in the Registration Act within the thirty days allowed by section 77 and not to file a suit for specific performance by the execution of a new sale deed and delivery of possession. Referring to the Allahabad and Calcutta decisions, Coutts Trotter, C.J., said: "It seems to me that these decisions in Calcutta and Allahabad in effect take upon themselves by a side wind to get rid of the period of limitation strictly imposed by the express words of the statute. To my mind no judicial decision has any right to tamper with a thing directly enforced and enjoined by a statute whose construction is free from possible doubt. The most that can be said is that the remedy given by the statute is not intended to be the only one. It is almost impossible to believe that the Legislature can have intended that there should be a direct and indirect way of effecting the same thing and that the period of limitation applicable to them should be entirely different". The learned Chief Justice added : "How it can be said that a man who is given an express statutory remedy by an act of Legislature under section 77 of the Registration Act and has failed to take advantage of it, has not been guilty of laches and is entirely free from blame passes my comprehension. It appears to me that a man who has failed to adopt the remedy expressly provided by the statute cannot come to this Court and ask for the exercise in his favour of a discretionary and equitable remedy". The last observation would suggest that where for any reason the remedy provided by the Registration Act is unavailable, then, possibly, there would be justification for seeking the Common Law remedy. In *Balkishen Das* v. *Bechan Pandey*[2], the Allahabad High Court maintained its earlier view and held that where a person enters into a contract to sell certain immovable property and executes a sale deed but abstains from getting it registered, section 77 of the Registration Act does not provide the only exclusive relief to the other party and that the latter is entitled to enforce specific performance of the contract. A similar view was expressed in *Jhaman* v. *Amrit*[3] by the Patna High Court. Fazl Ali, C.J., said : " In my opinion in a case like the present there are two alternative remedies available to the plaintiff. It is open to him either to bring a suit under section 77 of the Registration Act merely for the registration of the document, and if he chooses to adopt that course, that suit must be brought within thirty days of the date when the Registrar refuses to register the document. It is equally open to him to have recourse to the further and more comprehensive remedy provided by a suit for the specific permormance of the contract of sale". In *Venkatasubbayya* v. *Venkatarathnamma*[4], the modification of the strict doctrine favoured in *Venkatasami's case*[5], made in *Satyanarayana's case*[1], by holding that where it is not possible for the party to resort to proceedings under the Registration Act an independent suit for specific performance may lie, is taken a step further. It is held that where a party has set in motion the machinery for enforcing the registration of the deed of transfer no suit for specific performance can be brought; but it would be a different matter if the unregistered document is sought to be read as evidence of a contract in a suit for specific performance if the party had not set in motion the machinery provided by the Registration Act under sections 72 to 76. When once the machinery has been set in motion the logical conclusion is that action should be taken under section 77 before any suit for specific performance could be thought of. It was also held that the amendment to section 49 of the Registration Act by Act XXI of 1929 by adding the proviso to the section that an unregistered document affecting immovable property and required to be registered may be received as evidence of a

1. (1925) 50 M.L.J. 674 : I.L.R. 49 Mad. 302.
2. (1931) I.L.R. 54 All. 68.
3. (1945) I.L.R. 24 Patna 325.
4. (1954) 1 M.L.J. 396 : I.L.R. (1954) Mad. 775.
5. (1893) 3 M.L.J. 169 : I.L.R. 16 Mad. 341.

contract in a suit for specific performance, *etc.*, does not affect the position. In the instant case, after the execution of the sale deed by the second and third defendants to the plaintiff it became known that the second defendant had executed another sale deed in favour of the first defendant but with an earlier date. In view of trouble which might arise on that account the third defendant presumably with the consent of the plaintiff had made an endorsement in the sale deed in favour of the plaintiff that "should any dispute arise in respect of this it shall not concern us". The effect of it was that the plaintiff by consenting to it was really releasing the third defendant from his obligation under the law. The second defendant cannot however be affected by it. The registration authorities refused to register the document because there was a material alteration. The question then arose whether the plaintiff was entitled to specific performance of the contract as against the second defendant on the finding that the sale deed executed by the second defendant in favour of the first defendant had been *antedated*. According to the precedents in Madras, the machinery of registration having been put in motion, the suit can only be under section 77 of the Registration Act and not independently for specific performance. It was however held that a suit for specific performance will lie in the circumstances of the case. It was pointed out that, if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Registration Act, the vendee is entitled to sue for specific performance of the agreement to sell in his favour, though being an equitable remedy the Court has discretion to decline to award such relief, as where a vendee has neglected to present the sale deed for registration while he is in custody of it within the time prescribed and thereby loses his right to have it registered. It would thus seem that a suit for specific performance of the agreement to sell may be brought not only where the registration of the sale deed by the plaintiff has become impossible due to accident, loss or destruction of the document while in the plaintiff's custody but also even in cases where the machinery of registration has been set in motion provided that the plaintiff has not been guilty of such conduct as would preclude him from obtaining the relief of specific performance.

MADALA THATHIAH *v.* UNION OF INDIA, (1956) 2 M.L.J. 584.

This case deals with more points of interest than one. It accepts the principle that in regard to tenders the position is that a tender to supply goods up to a certain quantity at a certain price amounts to an offer to supply on those terms if and when the offeree places an order and *qua* that order creates a binding contract; that, even if the probable quantity which may be required has been specified in the invitation to tender the offeror has no remedy if the offeree does not give any orders at all or fails to order up to the specified quantity, although the offeror will be bound to deliver the specified goods as and when ordered by the offeree; and, that, if the invitation to tender had not expressed merely a maximum or limit but was for a specified quantity of goods, no more and no less, the acceptance of the tender becomes an acceptance in the legal sense and creates an obligation binding the tenderer to deliver and the acceptor of the tender to accept the delivery. The instant decision also holds that where there are two clauses in a contract totally repugnant to each other, the former clause alone is to be received and the latter is to be rejected. In *Furnivall* v. *Coombes*[1], it was held that a proviso which is in terms wholly repugnant to a covenant creating a personal liability is void. But if the proviso only limits the personal liability without destroying it, the proviso will be valid, *Williams* v. *Hathaway*[2]. Whether it is the one or the other will be essentially a question of fact. In *Forbes* v. *Git*[3]., Lord Wrenbury observed : "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the latter. Thus if *A*

1. (1843) 5 Man. & G. 736 : 134 E.R. 756.
2. L.R. (1877) 6 Ch. D. 544.
3. L.R. (1922) 1 A.C. 256, 259 (P.C.).

covenants to pay £ 100 and the deed subsequently provides that he shall not be liable under his covenant, that later provision is to be rejected as repugnant and void for it altogether destroys the covenant. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole. Thus if *A* covenants to pay £ 100 and the deed subsequently provides that he shall be liable to pay only at a future named date or in a future defined event or if at the due date of payment he holds a defined office, then the absolute covenant to pay is controlled by the words qualifying the obligation in manner prescribed. *Furnivall* v. *Coombes*[1] is an illustration of the former case: *Williams* v. *Hathaway*[2] is an illustration of the latter". Thus the later clause will be regarded as a limitation only if it provides for contingencies subject to which the covenant may be enforceable. The contingency naturally must be certain and objective and should not be the expression of a whim or fancy of the party. In *New Zealand Shipping Co.* v. *Societie des Ateliers et chantieres de France*[3], it was remarked by Lord Atkinson: "Of course, the parties may expressly or impliedly stipulate that the contract shall be voidable at the option of either party to it". But the avoidance can only be for valid reasons and cannot be arbitrary. In *Chunilal Dayabhai & Co.* v. *The Ahmedabad Fine Spinning and Weaving Co., Ltd.*[4], the defendants had contracted with the plaintiffs to supply manufactured piecegoods subject to the condition that if the defendants were not in a position to deliver the goods or did not give delivery for any reason, the plaintiffs could only treat the contract as cancelled but could not ask for damages for the breach. The stipulation was: "to cancel or not to cancel the sold goods for any reason depends on you." The defendants having failed to fulfil the contract, the plaintiffs sued them in damages. It was held by Mulla, J., that the stipulation only conferred on the plaintiffs power to determine the contract if they could give good reasons for so doing and that the defendants were bound to justify their refusal to perform the contract inasmuch as they could not themselves bring about the state of affairs which would avoid the contract. It is thus clear that parties to a contract may even stipulate that one or both of them shall have the power to rescind the contract on the happening of some specified contingency. The only thing objectionable is where the proviso or later clauses seeks altogether to destroy the obligation under the earlier clause.

PERUNDEVI AMMAL *v.* AMAVASIKAN, (1956) 2 M.L.J. 610.

This is more than a mere copy book decision. In view of the provision in the Hindu Marriage Act of 1955 for judicial separation as a matrimonial relief the effect of resumption of cohabitation between the spouses after a decree for separate living and maintenance is bound to be a matter of great importance. It has been tersely stated by Lord Eldon that reconciliation after a separation entirely did away with the effect of it, *Bateman* v. *Olivia, Countess of Ross*[5]. It renders ineffective any previous order for alimony. The amounts payable periodically under an order for alimony are not payments of a life annuity but are liable to be stopped at any moment if the husband and wife returned to cohabitation, *Linton* v. *Linton*[6]. In *Haddon* v. *Haddon*[7], an order had been made under section 4 of the English Matrimonial Causes Act, 1878, by the Justices of the County of Leicester that the wife should no longer be bound to cohabit with the husband and that he should pay her a weekly sum for her maintenance. Subsequent to the order the wife resumed cohabitation with the husband. Hawkins, J., held that the resumption of cohabitation had the effect of annulling the alimony order. He said: "It is impossible to suppose that the Legislature, in giving Magistrates power to release a wife from the obligation of cohabitation by reason of imminent danger from her husband's violence intended to confer upon them jurisdiction to make an order which should give a wife liberty to live apart from and resume cohabitation with

---

1. (1843) 5 Man. & G. 736 : 134 E.R. 756.
2. (1877) L.R. Ch. D. 544.
3. L.R. (1919) A.C. 1 (P.C.).
4. (1921) I.L.R. 46 Bom. 806.
5. (1813) 1 Dow. 235 : 3 E.R. 684.
6. (1885) 15 Q.B.D. 239.
7. (1887) 18 Q.B.D. 778.

her husband when and as often as she should think fit, and compel her husband to maintain her at all times when it pleased her to separate from him, even though her safety no longer required a separation." As remarked by Gorrel Barnes, J., the resumption of cohabitation puts an end to the cause of complaint justifying the ordering of alimony by reason of the principles of Common Law, *Williams* v. *Williams*[1]. In *Ellen Ma Noo* v. *William Po Thit*[2], a decree for judicial separation was passed in 1903 in favour of the wife which embodied an order for the payment to her of permanent alimony. The wife lived apart from the husband till February 1, 1907. Thereafter she returned to him and they lived together for over fourteen years. Subsequently the wife once again left the husband and applied for the execution of the decree for alimony obtained by her in 1903. It was held that in the circumstances she could not execute that decree and that if she desired to obtain an order for maintenance or alimony she should institute fresh proceedings. In *U Po Shein* v. *Ma Sein Mya*[3], it was held that a *bona fide* reunion removes the basis on which the order for maintenance rests and therefore as vacating the order. A different note was sounded in two decisions in India. In *Kanagammal* v. *Pandara Nadan*[4], a wife obtained a maintenance order under section 488, Criminal Procedure Code and subsequently returned to the husband. It was held that the maintenance order was not thereby put an end to but that its operation was merely suspended during the period of cohabitation. This view was followed in *Pearey Lal* v. *Naraini*[5]. In *Venkayya* v. *Raghavamma*[6], however, Leach, C.J., dissented from this view and observed: "I can see no difference in principle between an order passed under section 488 of the Indian Code of Criminal Procedure and an order under the Matrimonial Causes Act of 1878 or the English Summary Jurisdiction (Married Women) Act, 1895. If the principle stated by Lord Eldon is to be applied there can be no question of the suspension of the order. The order goes entirely". The reason is that the very basis on which the order had been obtained had been demolished and the cause of action did not survive in order to enable a continuous enforcement of the order. If, however, arrears of maintenance had become payable before the parties resumed cohabitation subsequently to the passing of the maintenance order, the right to recover such arrears will not be lost. In *Singaravelu* v. *Pattammal*[7], an unconditional decree had been obtained by the wife against her husband. She was alleged to have become unchaste subsequent to the passing of the decree. It was held that she can recover the arrears of maintenance under the decree and that the husband's remedy on the allegation can only be by way of a separate suit and not by way of objection to the execution of the unconditional decree. Referring to the observations of Leach C.J., in *Venkayya's case*[6], Rajamannar, C.J., said: "It is not difficult to sustain the decision in this case on a principle analogous to the satisfaction of a decree. The husband who was bound to maintain the wife was directed by the decree to pay her a certain sum of money towards her maintenance. If, subsequently, she herself came and lived with him and he maintained her there would be *pro tanto* a satisfaction of the decree. Apart from that, in that case, there was no dispute as to facts and there was nothing which made it incumbent on the executing Court to make an enquiry into new allegations made in the course of execution proceedings". In the instant case, a Hindu wife had obtained a decree for separate maintenance on the ground of cruelty, neglect and abandonment, and of his keeping a concubine. Later on the parties resumed cohabitation and lived together and the wife gave birth to a child as a result thereof. In those circumstances it was held that the maintenance decree was wiped off, that the mere resumption of cohabitation had that effect, and it was unnecessary to show that the causes which had led to the passing of the decree had also become removed. The instant decision follows fully the principles of English law on the matter.

---

1. L.R. (1904) P. 105.
2. (1924) I.L.R. 2 Rang. 163.
3. (1930) I.L.R. 8 Rang. 460.
4. (1926) 52 M.L.J. 176 : I.L.R. 50 Mad. 663.
5. (1935) I.L.R. 58 All. 379.
6. (1941) 1 M.L.J. 263 : I.L.R. (1942) Mad. 24.
7. (1948) 2 M.L.J. 519 : I.L.R. (1949) Mad. 613.

Sakharama Rao v. Nagasami Rao, (1957) 1 M.L.J. 3.

Section 38 of the Contract Act provides that an offer to one of several joint promisees has the same legal consequences as an offer to all of them. But tender of a money debt does not discharge the debt. In regard to the right to give a discharge the material section is section 45 which deals with the devolution of rights where a person has made a promise to two or more persons jointly. The section has however little light to afford in regard to the effect of payment to one of several joint promisees. Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to one joint owner without the consent of all in the absence of any agreement to the contrary. This provision concerns property and does not bear on debts. The decision in *Wallace* v. *Kelsall*[1], supports the view that payment to one of the joint promisees will constitute a valid discharge of the debt. The authority of this decision has however been shaken by the decision of Farwell, J., in *Powell* v. *Brodhurst*[2]. In India, in *Barber Maran* v. *Ramana*[3], the Madras High Court has, relying on the earlier English decision, and the language of section 38 of the Contract Act, held that a release of the mortgagor by one of two mortgagees on payment to him of the mortgage debt discharges the mortgagor as against the other mortgagee. In *Annapuranamma* v. *Akkayya*[4], this decision was approved and it was held that one of several payees of a negotiable instrument can give a valid discharge of the entire debt but that if the promisor had merely undertaken to pay the debt at a future date that will not be equivalent to a discharge. Similarly in *Ramaswami* v. *Chandra Kotayya*[5], it was affirmed that an undertaking given by a mortgagor subsequent to the date of the mortgage to pay the amount due to one of two co-mortgagees is not equivalent to discharge of the mortgage, and that to amount to an actual discharge there must be either payment to one of the joint mortgagees or the other mortgagee must consent to the mortgage being superseded by the subsequent undertaking. The view thus consistently taken in Madras has not been accepted by the other High Courts, *Sheikh Hakim* v. *Advaita Chandra Das Dalal*[6]; *Shyam Lal* v. *Jagannath*[7]. In view of this conflict of judicial opinion on a matter of great practical importance, it is desirable that the law should be settled by a decision of the Supreme Court. In the instant case, by arrangement among the parties one of two co-mortgagees was allowed to be in possession of the mortgaged property, receive the income and appropriate it towards the principal and interest due. It was found that the income so received from the property during the period of such possession was more than sufficient to discharge the entire debt, principal and interest due on the mortgage. The mortgage was thus discharged not by actual payment but by the co-mortgagor being allowed to be in possession and appropriate the income. It was held that here the payment must be deemed to be actual, though not in cash but by way of appropriation of income, and that it was thus a payment to a joint promisee within the meaning of section 45 of the Contract Act and would be a valid discharge of the mortgage debt.

---

1. (1840) 7 M. & W. 264.
2. L.R. (1901) 2 Ch. 160.
3. (1897) 7 M.L.J. 269 : I.L.R. 20 Mad. 461.
4. (1913) 21 M.L.J. 333 : I.L.R. 36 Mad. 544 (F.B.).
5. (1924) 47 M.L.J. 840 : I.L.R. 48 Mad. 693.
6. (1918) 22 Cal. W.N. 1021.
7. A.I.R. 1937 All. 527 : (1937) All. L.J. 395.

DEOKI NANDAN *v.* MURLIDHAR, (1957) 1 M.L.J. (S.C.) 28.

This is an instructive decision on the question as to who are the beneficiaries when a temple is built, idol installed and properties endowed therefor, and as to when the institution is to be regarded as a public or private temple. It is now well-settled that an idol is a juristic entity and that it can own property though only in an ideal sense, *Prosonno Kumari Debya* v. *Golab Chand Baboo*[1], *Maharaja Jagadindranath Roy* v. *Rani Hemanta Kumari Debi*[2], *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick*[3]. In the last of these cases Lord Shaw observed: " A Hindu idol is according to long established authority....a juristic entity. It has a juridical status, with the power of suing and being sued. Its interests are being attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would in such circumstances on analogy be given to the manager of the estate of an infant heir". He added: "The duties of piety from the time of the consecration of the idol are duties to something existing which, though symbolising the divinity, has in the eye of the law a status as a separate *persona*. The position and rights of the deity must, in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being ". A gift to the temple or idol is thus essentially for its benefit. But as suggested by Jenkins, C.J., in *Bhupati Nath Smrititirtha* v. *Ram Lal Maitra*[4], the dedication to the deity is only a compendious expression of the pious purposes for which the dedication is intended. The true purpose of a gift of properties to the idol is to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. As pointed out in *Hindu Religious Endowments Board* v. *Veeraraghavachariar*[5] the purpose of making a gift to a temple is not to confer a benefit on God but to confer a benefit on those who worship in that temple by making it possible for them to have the worship conducted in a proper and impressive manner. The true beneficiaries are thus the worshippers. They are, however, beneficiaries only in a spiritual sense, *Narayanaswami Gurukkal* v. *Irulappa*[6], *Vidyapurna* v. *Vidyanidhi*[7]. Their interest lies in seeing that the worship or service is properly conducted and that their spiritual wants are properly ministered to.

An institution is public if it is constituted for the benefit either of the public at large or of some considerable portion of it answering to a particular description. In private trusts ,the beneficial interest is vested absolutely in one or more individuals who are or within a certain time may be, definitely ascertained, see *Nabi Shirazi* v. *Province of Bengal*[8]. In a private trust the beneficiaries are specific individuals; in a public trust they are the general public or a class thereof. Also, in the former the beneficiaries are ascertained or capable of being ascertained, but in the latter they are incapable of ascertainment. The Supreme Court has reaffirmed these principles in the decision under review.

C. D. VENKATARAMAN, *In re*, (1957) 1 M.L.J. 26.

It is now well established that the powers of the High Court under Article 226 of the Constitution are very wide. The underlying purpose of the jurisdiction is the satisfactory furtherance of justice. The existence of an alternative relief available to a party need not fetter the exercise of the jurisdiction in an appropriate case. Where a taxing statute, for instance, is challenged, it has been held that the High Court will not refuse relief on the ground of an alternative remedy being available to the party, *Raghbir Singh* v. *Municipal Board of Hardwar Union*[9]. In *Subramanian Chettiar* v. *R. D. O., Devakottah*[10], it was stated : " It is well settled now, by decisions of the Supreme Court and the High Courts, that there is no absolute bar to entertaining writ petitions, and issuing a

1. (1875) L.R. 2 I A. 145, 152 (P.C.).
2. (1904) L.R. 31 I.A. 203 (P.C.).
3. (1924) 49 M.L.J. 30 : L.R. 52 I.A. 245 (P.C.).
4. (1910) I.L.R. 37 Cal. 128 (F.B.).
5. A.I.R. 1937 Mad. 750.
6. (1902) 12 M.L.J. 355, 358.
7. (1904) I.L.R. 27 Mad. 435, 451.
8. I.L.R. (1942) 1 Cal. 211, 227, 228.
9. A.I.R. 1956 All. 324.
10. (1956) 2 M.L.J. 126, 131.

writ even when there are alternative remedies, when these alternative remedies are in the opinion of the Court, not effective, speedy, sufficient or adequate ". In that case the properties of the petitioners were about to be attached and sold for stamp duty and penalty for recovering the amount as arrears of land revenue under section 48 of the Stamp Act and warrants were issued or were about to issue. In the circumstances it was held that there was no point in taking to the alternative remedies available as they would neither be speedy nor effective nor adequate to grant relief, and therefore relief under Article 226 might be granted. In *Krishna Iyer* v. *State of Madras*[1], the Court observed that even the existence of *effective* alternative remedies is by itself no bar to the assumption of jurisdiction under Article 226, though normally it is a very relevant factor which the Court will take into consideration in deciding whether the jurisdiction vested in the Court under Article 226 will be exercised in a given case. In *Noor Mohamed and Co* v. *State of Madras*[2], it is made clear that the exercise of the jurisdiction under Article 226 is essentially a matter of discretion and the existence of alternative remedies is not an absolute rule of law barring jurisdiction. In that case it was found that the questions raised were of great importance and complexity and that if the point made by the assessee were upheld it would mean that Rule 5 of the General Sales Tax Rules was invalid, and that would not be a ground which the assessee could put forward before the Tribunals constituted under the Act, and, therefore, relief could be sought under Article 226. The instant decision reaffirms the position as to the scope of Article 226. It also poses the question whether a rule requiring the previous permission of the Head of a Department before a Government servant could resort to proceedings under Article 226 will not be invalid in view of the Article granting the right to every citizen, which term will include Government servants also.

SYAMALAMBAL *v.* NAMBERUMAL CHETTIAR, (1957) 1 M.L.J. 118.

This case deals with a question of tort. There are two actions having superficially some resemblance but really characterised by substantial points of difference. These are actions for abuse of civil process and actions for trespass to property. The former action is like an action for malicious prosecution in that the plaintiff has to prove the absence of a reasonable and probable cause. The plaintiff has also to prove malice on the part of the defendant. In an action for trespass it is sufficient if the plaintiff proves the act of trespass and no proof of malice is required either. It is for the defendant in such an action to prove a good cause or excuse for his action. Where property is wrongfully attached and a person claims damages on that ground the question has arisen as to whether the action lies in trespass or as abuse of civil process. According to *Kissorimohun Roy* v. *Harsukh Das*[3], no proof of malice or want of reasonable care is necessary where the property of a person who is not a party to a suit has been wrongly attached, and in such cases the action is really one founded in trespass and no proof of special damage is needed. In *Srinivasayya* v. *Lakshmayya*[4], it was argued that an attachment of immovable property will stand on a different footing; that, under the law attachment of immoveable property merely operates as a prohibition of alienation by the person against whom the order is made; that there is nothing in the attachment to fetter the rights of the real owner if he is not the defendant or a party sought to be proceeded against: that at best, there might be cast a cloud upon his title which could be set right by proceeding under Order 21, rule 58, Civil Procedure Code, and, that, therefore there is nothing in the nature of trespass nor anything which causes damages to the real owner. The point was not decided though the learned Judge seemed inclined to hold that when the property of a person not a party to a suit is wrongly attached the action would be one founded on trespass. In the instant case the act of attachment though wrongful was only technically so. The learned Chief Justice makes it clear that a claim for damages for wrongful attachment of property can fall under two heads, trespass

---

1. (1956) 2 M.L.J. 179, 181.
2. (1956) 2 M.L.J. 374, 383.
3. (1889) L.R. 17 I.A. 17 : I.L.R. 17 Cal. 436 (P.C.).
4. (1938) 1 M.L.J. 73: I.L.R. (1938) Mad. 180.

or abuse of civil process; that where property of a person not a party to the suit is attached wrongly the action is one grounded on trespass; but that where the attachment complained of was under judicial sanction though at the instance of a party the remedy is an action for abuse of process; and in such a case the plaintiff has to prove the absence of reasonable and probable cause as well as malice on the part of the defendant. On the finding that the defendant had a reasonable excuse for attaching the properties in the hands of the plaintiff it was held that the defendant had established a good plea in defence whether the action was treated as one for trespass or as one for abuse of civil process.

SUBRAMANIAM CHETTIAR *v.* MUTHIAH PILLAI, (1957) 1 M.L.J. 147.

This case deals with the question whether there is a period of limitation for an application by a mortgagor-plaintiff in a redemption suit to pass a final decree. Under Order 34 of the Civil Procedure Code, if the mortgagor claiming redemption has failed to deposit the amount on or before the date specified by the preliminary decree, extension of time for payment may be asked for under rule 7 (2). Rule 8 (3) provides that the mortgagee may apply for a final decree debarring the plaintiff from all right to redeem the property in case the mortgagor had failed to deposit the amount by the date fixed in the preliminary decree. The question whether a mortgagor who had not sought extension of time for payment under rule 7 (2) can, taking advantage of the mortgagee's failure to apply under rule 8 (3) to bar the right of redemption, deposit the amount at any time after the date set in the preliminary decree and thereafter apply for the passing of a final decree for redemption presents no doubt a piquant problem but has been considered and dealt with in *Angammal* v. *Muhammad Sulaiman Lebbai*[1]. The conclusion in the case shows that law always favours the vigilant and that where the mortgagee has not taken action in the manner directed by the law the mortgagor is entitled to take advantage of such inaction. In that case, the preliminary decree for the redemption of a usufructuary mortgage had been passed on October 15, 1935 and the time fixed for payment by the mortgagor was January 15, 1936. The mortgagor did not deposit the amount nor did she apply for extension of time for payment. She actually deposited the amount nearly 6 years later at the end of 1942, and applied on February 2, 1943 for the passing of a final decree for redemption under Order 34, rule 8 with a direction to the mortgagee to render possession of the property to the plaintiff. The Court held that the mortgagor had a right to deposit the money so long as a final decree debarring her right of redemption had not been passed under rule 8 (3) on the application of the mortgagee, that she was not bound to apply for extension of time under rule 7 (2), and that her failure to do so will not preclude her from taking advantage of the mortgagee's inaction. In that view the plaintiff's application for the passing of a final decree was held to be in time. In the instant case it is pointed out that for such an application the cause of action arises on the actual payment or deposit of the amount fixed by the preliminary decree, that the period of limitation for such an application is governed by Article 181 of the Limitation Act, and that the period will be three years from the date of the deposit

---

KADAN KUNHIKANNAN, *In re*, (1957) 1 M.L.J. 151.

Section 243, Criminal Procedure Code, provides that on admission by the accused that he has committed the offence with which he is charged and on his failing to show sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. If, however, the Magistrate does not so convict, or if the accused does not admit the guilt in the first instance, the Magistrate shall under section 244 proceed to hear the complainant and take all such evidence as may be produced by the prosecution, and also hear the accused and take all such evidence as he may produce in his defence. There is nothing in the section which precludes the accused from pleading guilty when he is heard after the prosecution evidence has been taken though he may have in the first instance plead-

---

1. (1945) 2 M.L.J. 239.

ed not guilty. Nor is there anything in the section precluding the Magistrate from accepting such plea of guilty made at that stage and sentence him. Where however, the accused had in the first place pleaded not guilty and denied the offence, but on an adjourned date put in a signed statement admitting his guilt and the Magistrate thereupon got it confirmed by questioning him, the position will be different. Under section 244 a Magistrate can question the accused for a second time where he denied the offence originally, only after hearing the complainant and taking the evidence by the prosecution. When once the accused had denied the offence the Magistrate should proceed in the manner provided in section 244 and cannot again question the accused merely because on the adjourned date he chose to put in a statement admitting his guilt. It has been so held in *David Chellayya* v. *State*[1]. In the instant case, it was only after the procedure prescribed by section 244 had been gone through that the accused was questioned and made his admission of guilt. In the circumstances, it was held that such hearing of the accused for the second time after his initial denial of the offence was not improper and did not in any way contravene the provisons of the Criminal Procedure Code.

I.S. VASUDEVA BHAT, *In re*, (1957) 1 M.L.J. 165.

This case deals with the interesting question whether in a prosecution of an employer for failure to reinstate a dismissed employee in accordance with the order of the Commissioner of Labour under the Madras Shops and Establishment Act (XXXVI of 1947), the question of the legality of the dismissal can be gone into. Section 41 (1) of the Act lays down the procedure to be followed by the employer before he terminates the service of an employee. Clause (2) provides for a right of appeal to the Commissioner of Labour. Under clause (3) the decision of the appellate authority is final and shall be binding on both the employer and the employee. The question is whether such provision precludes the correctness of the Labour Commissioner's order from being challenged in any other proceedings. There are similar provisions in other enactments postulating finality in respect of decisions of statutory bodies with reference to which courts have considered how far such finality affects the jurisdiction of the civil Courts to go into the legality of the decisions. Even in regard to the acts of Government under statutory authority, it has been held from early times that a civil Court can give relief if the impugned act is *ultra vires* notwithstanding any bar of the Court's jurisdiction enacted in the statute. Thus, for instance, section 58 of the Madras Revenue Recovery Act prohibits the civil Courts from taking cognisance of suits involving the consideration or decision of any question regarding the rate of land revenue payable to Government or the amount of assessment that may be fixed. It has been held that such a bar will not affect the Court's jurisdiction to decide whether or not the land or the person is at all under liability to be assessed to land revenue, or, in other words whether the act of the Government is *ultra vires*, *Madathapu Ramayya* v. *Secretary of State for India*[2]. A similar rule governs the acts of statutory bodies. In *Smith*, In re[3] in a prosecution for the offence of non-payment of the license fee payable for erecting a machinery under section 288 of the Madras City Municipal Act, the fact that the accused had not appealed to the Standing Committee against the imposition of the fee and thereby such imposition had been allowed to become final was held not to preclude the accused from raising the plea that the machinery was not one in respect of which a license fee was required, and that he was therefore not liable to pay the same. This decision was followed in *Chairman, Municipal Council, Chidambaram* v. *Thirunarayana Iyengar*[4]. In the course of his judgment, Devadoss, J., said: "I have no hesitation in holding that, when an act is *ultra vires* a statutory body....the Court which is asked to convict a person for the violation of the order of the statutory body is not prevented from considering the legality of the order." In that case a prosecution had been launched under section 338 (*b*) of the Madras District Municipalities Act against a Coffee Hotel keeper for carrying on the business after the cancellation

---

1. A.I.R. 1957 Trav.-Co. 89.
2. (1903) I.L.R. 27 Mad. 386.
3. (1923) 45 M.L.J. 731.
4. (1927) 55 M.L.J. 566 : I.L.R. 51 Mad. 876.

of his license for a reason other than the contravention of the terms of the license. The question was raised whether the Chairman's order cancelling the license can be canvassed in the prosecution as an *ultra vires* act of the Chairman and it was held that it can be done. In *Ramaswami Iyengar* v. *Sivakasi Municipality*[1], the question was whether under the Madras District Municipalities Act which had provided that under certain conditions where an assessment to profession tax had not been challenged or after objection the assessment had been confirmed, the aissessemnt shall be treated as final, the legality of the levy can be examined by the Court in a prosecution against the assessee for non-payment of the tax. It was laid down that the finality of the assessment order under the Act was only for the purposes of the Actand would not prevent a person from impeaching the legality or validity of the assesment in a Civil Court and that a different principle cannot apply in the case of a criminal prosecution. In *Public Prosecutor* v. *Kondappa*[2], also, a person was prosecuted for non-payment of profession tax due to a District Board. The assessee had failed to appeal against the assessment within the prescribed time and the assessment had thus become final. It was held that despite this fact the validity of the assessment can be examined in the prosecution proceedings for the non-payment of the assessment amount. The principle is that cases of fundamental departures from the meaning of the statute should be deemed to be excluded from the operation of the bar of finality. Yahya Ali, J., observed : "There cannot be the slightest doubt as regards the position that where the legality of the assessment is questioned or where it is contended that the assessee is not taxable at all, then the assessment has no legal existence, and it would be open to him in a civil suit to question the legality of the assessment notwithstanding rule 31......*A fortiori* would such a right be available to an accused person in a criminal proceeding". These decisions were followed in *Narasingamuthu Chettiar*, In re[3] which was a case of prosecution for non-payment of tax under the General Sales-Tax Act which in section 11 (4) had provided that every order, pending appeal under that section, shall be final. In the instant case, applying these principles it was held held that notwithstanding the provision in section 41 (3) of the Shops and Establishments Act giving finality to the order of the Commissioner of Labour it is open to the Court to go into the question whether the act of the accused constitutes an offence or not. In fact under the concerned enactment while in regard to decisions under one section, section 51, it is expressly provided that the decisions of the Commissioner shall be final and not be liable to be questioned in any Court of Law, there is no similar provision shutting out the Court's jurisdiction in regard to decisions of Commissioner of Labour under other sections, like section 41.

PONNUSWAMI CHETTIAR *v.* VELLAIMUTHU CHETTIAR, (1957) 1 M.L.J. 179.

This decision holds that the absence of the name of the payee in a promissory note will not *per se* make the instrument invalid when the payee was known to the maker of the note with certainty even at the time of the execution of the instrument. In *Abdul Hakim* v. *Ebrahim*[4], two promissory notes had been executed on March 27, 1915, in favour of one Abdul Hakim Ear Mahomad by the defendants. A suit was instituted by the plaintiff for recovering the amounts due under the note, on the assumption that he was the payee under the notes. The defendants contended that the payee was a different entity altogether, a firm which bore the same name as that of the plaintiff. In holding that the plaintiff cannot sue on the notes, the Court said : " The defendants urge that the notes were given, not to the plaintiff but to a firm which happens to possess the same name as the plaintiff. This raises a question, not of benami, but of the identity of the person to whom the note was given ; and the plaintiff cannot succeed till the matter has been determined in his favour ". In the instant case, the promissory note recited the name of the payee as " son of A. Palaniyandi Chettiar ". A particular son was known to have advanced the sum of Rs. 1,000 to the maker of the note which was also the amount for which the note had been executed. Following the principle laid down in the Calcutta

1. 1936 M.W.N. 221.
2. (1947) 1 M.L.J. 317.
3. (1948) 2 M.L.J. 221.
4. (1920) 32 Cal.L.J. 132.

case it was held that section 92, proviso 6 of the Evidence Act will enable evidence of the identity of the payee being let in.

NATARAJAN *v.* REGIONAL TRANSPORT OFFICER, CHINGLEPUT, (1957) 1 M.L.J. 233, V. C. K. BUS SERVICE, LTD. *v.* REGIONAL AUTHORITY, COIMBATORE, (1957) 2 M.L.J. (S.C.) 43.

Both these decisions affirm that when a permit is renewed under the Motor Vehicles Act, it is a continuation of the original permit and not the grant of a fresh one; so much so, the transport authorities can cancel or suspend the latter for breach of the conditions committed during the currency of the original permit. The second of the decisions further holds that even assuming that the renewed permit is not a continuation of the original permit, it is subject to the implied condition that it is liable to be cancelled if the original permit is cancelled. The term ' renewal ' means literally a transformation to new life, invigoration, regeneration, revival, substitution, or beginning again. This would suggest that though ordinarily there is the element of continuity it also involves the idea of substitution or replacement. In *Sharp* v. *Wakefield*[1] on an appeal from an order of refusal to renew a license for the sale of intoxicating liquors, Lord Bramwell observed: " The license is a renewal. That word has been criticised. It may be misleading, but is I think, correct. It is a 'renewal' *i.e.*, a new license." The decision emphasises that renewal is not as a matter of course, and, in that sense, the renewing of a license is tantamount to the grant of a new license. Turning to the provisions of the Motor Vehicles Act, section 58 (1) provides that a permit other than a temporary permit issued under section 62 shall be effective without renewal for such period not less than three years and not more than five years as the Regional Transport Authority may in its discretion specify. According to section 58 (2) a permit may be renewed on an application made and disposed of as if it were an application for a permit: Provided that other conditions being equal an application for renewal shall be given preference over new applications for permits. The language of clause (2) suggests that notwithstanding the proviso a renewal when granted is granted on an independent consideration of the merits and that it cannot be distinguished from a fresh grant. There is also the further fact that, in law, a renewal implies, as for instance, in the case of a lease, that the original terms are not disturbed; but, on the other hand, in the case of renewal of a bus license it would be open to the authorities to impose new conditions and modify the original terms; hence the use of the word ' renewal ' should not lead to the inference that it was the original permit that was being continued. In *Mahabir Motor Co.* v. *Bihar State*[2], the Court made an observation that both grant and renewal stand on more or less the same footing by reason of the provisions of sections 47, 57 and 58 of the Motor Vehicles Act; but the observation was only with reference to the question whether an appeal will lie against an order granting a renewal in view of the specific provision in section 64 providing for an appeal from an order granting a permit. The implication of the term ' renewal ' was examined in *Anjiah* v. *Regional Transport Officer, Guntur*[3]. In that case an order of suspension had been passed for breach of one of the conditions of the permit. Pending the disposal of the appeal challenging the correctness of the suspension order, the permit period had expired and the permit-holder had been granted a renewal. On the rejection of the appeal against the suspension order subsequently, the question arose whether the suspension order could be enforced against the renewed permit. In holding that it cannot be done, the Court observed: " An applicant for renewal of a stage carriage permit along a particular route will generally have to survive competition along with other applicants when he applies for renewal, and all that he can claim is a preference over others if other conditions are equal. Where therefore a permit is granted to him once more, it cannot in our opinion be treated as the old permit extended for a fresh period ". The Court was also inclined to draw a distinction between the renewal of a permit of a private carrier or motor cab and the renewal of a stage carriage permit. It was observed that " while

1. L.R. (1891) A.C. 173, 183.
2. (1956) I.L.R. 34 Pat. 429.
3. (1956) An. W.R. 344.

in the case of the renewal of a permit of a motor cab, it may not be inappropriate to describe the new permit as the old permit with an extended period, the same cannot be said of a stage carriage permit granted to the holder of a previous permit". The assumption underlying the distinction is that in the case of a motor cab the renewal is almost automatic whereas in the case of renewal of the permit of a public carrier there is no such automatism. This assumption does not seem to be altogether correct, in view of rule 185, according to which in certain circumstances there is an automatic renewal of the permit in the case of a stage carrier also. It is, however, true that in no case is there a right of renewal as such, and when a permit is renewed there is no right for the permit-holder to insist on the continuance of the old terms either. As against these considerations it is apparent that the language of section 58 (1) shows that when there is a renewal, the effective period is not the original period specified, but the period up to which the renewal is granted thereby suggesting that the life of a renewed permit is one and continuous. In that view in *Muthuvadivelu* v. *Regional Transport Officer*[1], it was held that where the renewal is obtained on the basis of a permit which is subsequently cancelled, it could not be regarded as a fresh permit, that when the original permit is set aside it must be taken to be *non est* for all purposes, and that the renewal must be deemed to be a nullity. The Supreme Court has in the second of the decisions under notice approved this line of thought and held that 'renewal' is in essence a continuation of the original permit and an order of suspension or cancellation of the original permit can be operated against the renewed permit as well. The Supreme Court also recognises that, while it is undoubted law that when the terms of a contract are reduced to writing no condition can be implied therein, it is at the same time clear that there can be a condition subsequent on the happening of which a permit will cease, and that there is no legal obstacle to implying a condition that the renewal of the permit should stand cancelled if the right of the holder to the original permit was negatived. The conclusion arrived at in the first of the decisions under notice is thus reinforced by the Supreme Court. Though in a renewal both elements, continuity as well as replacement, are present it is the context only that can determine which of these elements is the dominating factor in the particular case.

THIRUMALAI NAIDU *v.* CHALLAPATHI NAIDU, (1957) 1 M.L.J. 349.

Rule 8 of the Madras Cultivating Tenants Protection Rules, 1955, provides that the proceedings of the Revenue Divisional Officer shall be summary and shall be governed as far as possible by the provisions of the Civil Procedure Code as to the issue of service of summons, examination of parties and witnesses, and the production of documents. Having regard to the summary character of the proceedings and the specifying of particular matters alone regarding which advertence to the principles of the Civil Procedure Code is to be had, it would seem that the Revenue Divisional Officer will have no inherent jurisdiction to set aside any order passed by him *ex parte*. It is a well-known principle that when once a matter is disposed of the order thereon acquires finality unless the Court or Tribunal is clothed with special powers to reopen such finality. The instant case affirms this principle.

LAKSHMI REDDY *v.* LAKSHMI REDDY, (1957) 1 M.L.J. (S.C.) 46.

To constitute adverse possession, the requisite possession must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor, *Radhamoni Debi* v. *Collector of Khulna*[2]. The possession must be *nec vi, nec clam, nec precario*, see *Secretary of State for India* v. *Debendra Lal Khan*[3]. The possession held should have been overt and not clandestine, open and not fugitive, so that the person against whom time is running ought, if he exercises due vigilance, be aware of what is actually happening. Even if it be the Government against whom the adverse enjoyment is set up it will not be permitted to plead that the fact of adverse possession had not been brought to its notice. Nor is it necessary for the establishment of adverse possession

1. A.I.R. 1956 Mad. 143.
2. (1906) L.R. 27 I.A. 136 : I.L.R. 27 Cal. 943 (P.C.).
3. (1933) 66 M.L.J. 134 : L.R. 60 I.A. 78 (P.C.).

that the proof relating to such acts of possession should cover and account for every moment of the requisite period. In Scotland it had always been the law that " though the possession be not proven to have continued every quarter, month or year, yet ordinary possession will be sufficient *ad victoriam causae* albeit it be proponed in the terms of a continual possession *quia probatio extremis praesumuntur media*, if the distance be not great."[1] Even if the several acts of possession are at considerable intervals it may yet be continuous. How many such acts should be proved must necessarily depend on the nature of the case. It must necessarily vary with the nature of the subject-matter possessed and the possession must be of the kind which the particular subject is susceptible of. Thus, for instance, in regard to land liable to submergence the acts of possession can relate only to a period when the land was not covered by water and it may well be that a considerable interval of time separates one act of possession from another. Also, possession will never be considered to be adverse if it can be referred to a lawful title, *Thomas* v. *Thomas*[2]. Hence adverse possession of one co-heir against others cannot be established by the mere fact of his sole possession and enjoyment of the properties. In *Corea* v. *Appuhamy*[3], the defendant who was one of four coparceners by descent had taken possession of the suit property in 1878 and settled the same on his son in 1907. A suit was brought by the assignees of the interests of the other coparceners for partition of the property. The defendant claimed to have acquired exclusive title by adverse possession and enjoyment. In rejecting the defence, Lord Macnaghten observed : "Entering into possession and having a lawful title to enter, he could not divest himself of that title by pretending that he had no title at all. His title must have enured for the benefit of his co-proprietors ". The noble Lord went on to state : "His possession was in law the possession of his co-owners. It was not possible for him to put an end to that possession by any secret intention in his mind. Nothing short of ouster or something equivalent to ouster could bring about that result". In *Cully* v. *Doed. Taylerson*[4], the limits of the rule that possession of one coparcener is that of another were propounded as follows : "Generally speaking, one tenant-in-common cannot maintain an ejectment against another tenant-in-common, because the possession of one tenant-in-common is the possession of the other, and to enable the party complaining to maintain an ejectment there must be an ouster of the party complaining. But where the claimant tenant-in-common has not been in the participation of the rents and profits for a considerable length of time and other circumstances concur, the Judge will direct the jury to take into consideration whether they will presume that there has been any ouster." In the instant case, the Supreme Court points out that to constitute ouster there must be evidence of open assertion of hostile title coupled with exclusive possession to the knowledge of others, and, where one co-heir has maintained such possession and continued it for a considerable length of time and the excluded co-heirs took no steps whatever to obtain relief, ouster could be inferred.

The Supreme Court touched off another point as well in the instant decision. It is well settled law that the possession of a receiver appointed by the Court is the possession of the Court itself and as such the possession of all the parties to the action according to their titles, *Bertrand* v. *Davies*[5], Re *Ind. Coope & Co.*[6]. The property will be deemed to be in *custodia legis*. The receiver is only a stakeholder and his custody ultimately enures to the benefit of the true owner, *Ramaswami* v. *Mathuraswami*[7], *Khagendra* v. *Matangini*[8] and *Rao Karan* v. *Raja Bahadur*[9]. The instant decision makes it clear that the rule as to the receiver's possession being that of the successful party cannot be pushed to the extent of enabling a person initially not in possession to claim the tacking on of the receiver's possession to his own subsequent adverse possession, but that it may be different when the defendant holding adversely prior to the suit is dispossessed by the receiver and subsequently the defendant succeeds and gets back his possession.

---

1. Stair's Institutions of the Law of Scotland IV, 40, 20.
2. 2 K. & J. 79, 83.
3. L.R. (1912) A.C. 230.
4. 3 P. & D. 539 : 52 R.R. 566.
5. (1862) 31 Beav. 429.
6. L.R. (1911) 2 Ch. 223.
7. (1906) I.L.R. 30 Mad. 12.
8. (1890) I.L.R. 17 Cal. 814 (P.C.).
9. (1882) I.L.R. 5 All. 1 (P.C.).

RAJA RAJESWARI AMBAL v. DISTRICT BOARD TINNEVELLY, (1957) 2 M.L.J. 73.

This decision deals with a question of more than passing interest, namely, whether the expression "persons entitled to be maintained from the estate or its income" within the meaning of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) includes within its ambit institutions like a choultry which are to be maintained or supported out of the estate income. Under section 44 of the Act the Tribunal shall apportion the compensation deposited by the Government consequent on the abolition of the estates among the principal landholder and any other persons whose rights or interests in the estate stand transferred to the Government under section 3, clause (*b*) including persons who are entitled to be maintained from the estate and its income. 'Persons' in law may be either natural or artificial. The former are always human beings. The latter is a fiction which the law recognises for certain reasons. A religious or charitable institution is endowed by law with personality, and, in that way a choultry is a person. A payment to an individual for purpose of his support or sustenance is described as maintenance. By parity of reasoning a grant for the support of an institution may also be viewed as maintenance in a broad sense. The purpose being the same, namely, the continued existence of the object, it would not be a misnomer to call it 'maintenance'. Nor does the term maintenance stand conditioned upon any antecedent obligation of the grantor under his personal law to support the grantee. The point is made clear in *Anirudha Mitra* v. *Official Receiver*[1], where the Court observed : "But we cannot say that there could not be a maintenance grant unless there was an antecedent obligation on the grantor to maintain the grantee under the personal law of the parties. An obligation to maintain may arise *de hors* the personal law as under a contract or by way of bounty. Nor is there any thing inconsistent with the concept of maintenance if the grant takes the form of an annuity or is charged on property and made heritable or alienable. This aspect of the matter was adverted to in *Lakshmi Venkayamma* v. *Surya Rao Bahadur*[2], where it was stated : "The owner of property may be under a personal obligation to pay maintenance to another or he may in his bounty agree to pay maintenance to another. This right to maintenance may be embodied in a document creating a charge over the property or only creating a personal obligation on the owner. The right may be confined to the lifetime of the grantee or may be made heritable or both heritable and transferable. Whatever may be the terminology used, if the object of the grant was to provide for the maintenance of the grantee, the fact that the right to receive periodical payment from out of the income of the estate is made heritable or even transferable, cannot make the grant any the less a grant for maintenance". It would thus follow that a charge in perpetuity created over property for the support of a choultry can be regarded as a maintenance grant and the institution as a maintenance-holder in a loose sense of the term. The real question however will still remain, namely whether in the context of section 44 and other sections of the Madras Estates Abolition Act a choultry can be treated as a person entitled to be maintained from the estate or its income; in other words, whether the term 'person' will include an inanimate institution. From the collocation it is fairly apparent that the term 'persons entitled to be maintained' should be construed *ejusdem generis* with the term 'landholder' who is a natural person, and therefore as signifying only human beings having the right to be supported by the estate or its income, see *Gopalakrishna* v. *Sarvagna Krishna*[3]. The learned Judges in the instant case have reached a similar conclusion that the term 'persons entitled to be maintained' which occurs at different places in the Act has reference only to natural persons and will not include institutions.

DHARMAPURAM MUTT v. COLLECTOR OF TRICHINOPOLY, (1957) 2 M.L.J. 97.

This is a useful decision which incidentally affords guidance in regard to a practice point. Investigation of title to property is done by solicitors and is relatively a simple affair in England. In India investigation of title to property is very often not

1. I.L.R. (1942) 1 Cal. 427.
2. (1956) An. W.R. 37.
3. (1955) An.W.R. 590.

made prior to a transaction of sale and purchase of property or investment in property. Investigation of title in this country is also to some extent a difficult matter. For one thing, there is no standard period here for the root of title. Nor are title deeds meticulously or systematically preserved as in England. The recognition afforded to benami transactions, the peculiarities of the Hindu joint family tenure with its ownership of property in commensality, the tenancy-in-common obtaining among Muslim co-heirs have all added to the difficulties of investigation. Notwithstanding these factors, investigation of titles following the English conveyancing practice and precedents is to the fore in an increasing measure in India also at the present time. Under section 55 (1) (*b*) of the Transfer of Property Act the seller is under an obligation to produce the title deeds for inspection by the buyer in order that he may satisfy himself about the title, *Jyotiprasad* v. *H. V. Low & Co.*[1]. If the buyer omits to take inspection he runs a risk and he will be deemed to have had constructive notice of matters which he would have discovered had he made an investigation of the title, *Harilal* v. *Mulchand*[2]. The same principles will apply where an investment of money deposited in Court under land acquisition proceeding has to be made. Under the English law when the title is not registered under the Land Registration Act, 1925, the seller has to prepare and deliver an abstract of title, and the title deeds and other evidence are produced for verification of the abstract. But in India this practice does not generally obtain. Section 55 (1) (*b*) enables the prospective buyer or investor to make enquiries when on an examination of the documents of title the buyer is not satisfied. The enquiries are thus essentially for the protection of the buyer or investor and call attention to possible omissions of disclosure by the seller. The investigation of title and any enquiries that may have to be made thereupon have to be carefully done and by a competent lawyer. In *Srimati Charan Manjari Dasi* v. *Land Acquisition Collector*[3], an Attorney had been engaged with the approval of the Land Acquisition Judge and he had made the necessary investigations regarding the suitability, market value, and title of the property and did other things incidental to the completion of the investment; and the Attorney submitted at the end of it all a bill in respect of the work done by him. On a question arising whether the Land Acquisition Collector can legitimately object to the payment of the bill out of the money deposited in Court whose investment had occasioned the employment of the Attorney's services Gugha and Bartley, JJ., observed : "On the materials before us we have no hesitation in coming to the conclusion that the work done by the Attorney as evidenced by his bill of charges were acts essential and necessary for purchasing property and as such were reasonable charges and expenses as contemplated by section 32 (2) of the Land Acquisition Act." In the instant case, an argument was advanced that the cost of examining the title deeds cannot be included in the term cost of investment" in section 32 (2). In rejecting the contention the Court observed : "Before an investment can be made properly, and no Court should encourage improper and careless investment, the title deeds have to be carefully examined by a competent lawyer. It would be wholly unjustifiable to disallow a reasonable advocate's fee for examination of such title deeds." The instant decision further laid down that though in England it is usual to allow a fee of one per cent. for the examination of title deeds of properties of high value, in India, having regard to the fact that it is a poor country, an Advocate's fee of a half per cent. can be granted. In the case under consideration, the properties involved and the sum to be invested were worth Rs. 83,400. A sum of Rs. 450 as Advocate's fee for the examination of the title deeds was deemed to be proper.

MURUGAN, IN RE., (1957) 2 M.L.J. 9.

The doctrine of 'grave and sudden provocation' as an extenuating factor in reducing murder to manslaughter has been the subject of consideration in many cases, but its scope remains as elusive as ever. In *R.* v. *Hayward*[4], Tindal, C.J., explained the terms as signifying "provocation so recent

---

1. (1930) I.L.R. 57 Cal. 1189.
2. (1928) I.L.R. 52 Bom. 883.
3. A.I.R. 1935 Cal. 119.
4. 6 C. & P. 157.

and strong that the prisoner might not be considered at the moment master of his own understanding". In *Reg.* v. *Walsh*[1], Keating, J., pointed out that "there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man and so to lead the jury to ascribe the act to the influence of that passion." The Central Court of Criminal Appeal accepted this test in *Rex* v. *Lesbini*[2], as correctly expressing the legal position. In that case the prisoner entered a shooting gallery at which the deceased was one of the attendants. She used with reference to him some language which was perhaps provocative but was intended to be jocular. The expression was however understood by the prisoner to involve an offensive reference to himself or his race. Shortly therefter the deceased happened to drop her keys and the prisoner picked them up and returned them to her, for which act she thanked him and remarked that his temper was soon over. She then handed over to him a revolver to practise shooting at a target. But he levelled the weapon at her, chased her when she fled and shot her fatally. The learned Judges held that this was not a case of grave and sudden provocation as would reduce the offence from murder to manslaughter. In *Rex* v. *Hopper*[3], Lord Reading, C.J., explained the principle to mean that the provocation received should be such as tended to make the appellant lose control of himself at the critical moment when he fired the rifle. The House of Lords examined the question fully in *Mancini* v. *Director of Public Prosecutions*[4], and Viscount Simon, L.C., observed : "It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control as the result of which he commits the unlawful act which causes death. .... In short, the mode of resentment must bear a reasonable relationship to the provocation, if the offence is to be reduced to manslaughter." The British Courts have also held that in the case of sexual misconduct, it is only the actual finding of a spouse in the act of adultery that would constitute grave and sudden provocation, but not a sudden confession of adultery by either spouse to the other. It is further held that the exception cannot be extended to any other case. Typical of this line of decisions is that in *Holmes* v. *Director of Public Prosecutions*[5]. It was there observed : "The whole doctrine relating to provocation depends on the fact that it causes or may cause a sudden and temporary loss of self-control whereby malice which is the formation of an intention to kill or to inflict grievous bodily harm is negatived. Consequently where the provocation inspires an actual intention to kill or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies. Only one very special exception has been recognised, *viz.*, the actual finding of a spouse in the act of adultery. This has always been treated as an exception to the general rule ; but it has been rightly laid down that the exception cannot be extended. A sudden confession of adultery by either spouse without more can never constitute provocation of a sort which might reduce murder to manslaughter," An analysis of the English decisions shows that (i) the provocation must be wholly recent and strong ; (ii) it should be such as to make a reasonable man lose all control over himself ; (iii) the mode of resentment must bear reasonable relationship to the provocation ; (iv) the finding of a spouse in the act of adultery will amount to such provocation ; (v) a sudden confession of adultery by either spouse will not constitute such provocation ; and (vi) the exception cannot be extended.

In India, *Exception* 1 to section 300 lays down that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The *Explanation* to the *Exception* makes it clear that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. To fall within the scope of the *Exception* the act of causing death should have been done by the offender under the influence of some feeling depriving him of all self-control engendered by a provocation which is both 'grave and sudden, *Chervirala*

---

1. (1869) 11 Cox 336, 338.
2. L.R. (1914) 3 K.B. 1116 (C.C.A.).
3. L.R. (1915) 2 K.B. 431, 435.
4. L.R. (1942) 2 A.C. 1, 9.
5. 1946 All E.R. 124.

Narayan, In re.[1] The terms 'grave and sudden provocation' in *Exception* 1 to section 300 must be deemed to have been used with the connotation they have acquired in English law. It is therefore rather curious that in some of the decisions the scope of the doctrine has been extended to cover the case of a mistress being found in the arms of a former lover (*Kota Potharaju* v. *Emperor*[2]), or a sister having intercourse with a paramour (*Amarsingh Rangaraju* v. *State*[3]). That apart, a more intriguing question has been whether a wife's refusal to give up her intimacy with her paramour and statement of her intention to continue such relationship would be sufficient to constitute grave and sudden provocation within the meaning of *Exception* 1 to section 300. In *Sukhai* v. *Emperor*[4], the deceased who was the wife of the accused was leading an immoral life and the husband was aware of it. His attempts to make her cease to lead such a life were not successful. One day the couple along with their seven year old daughter had gone to the railway station to catch a train. On arrival at the station they found they would have to wait for some hours before they could catch the train. While they were so waiting the wife went out and some time later when the husband went to look for her he found her outside the station having intercourse with a man. On his flinging a stone at that man he went away. The husband's version as to these facts was corroborated subsequently by the testimony of the daughter. The couple boarded the train when it arrived, got down at their destination and were walking through a grove. The child having in the meanwhile fallen asleep, the husband reproached the wife for her conduct and instead of expressing repentance she said she would continue to do such acts and abused her husband. He became enraged and beat her with a stick. She struggled with him and bit his fingers. Thereupon he pulled out a knife and stabbed her fatally. The Allahabad High Court held that the case fell within *Exception* 1 to section 300. The Court observed : "We think that the immediate provocation at the grove coming on top of all that had gone before was sufficient to come within *Exception* 1 to section 300 of the Indian Penal Code and to reduce the offence from murder to culpable homicide." The impenitence of the wife and her biting the husband's fingers may be the proverbial last straw that broke the camel's back. But it is debatable whether a husband who was fully aware of the repeated infidelities of his wife and the futility of his remonstrances could be said to be moved not merely into a grave but also a sudden provocation by her struggle to avoid the beating and her biting his fingers so as to make him entirely lose control over himself. The cause for the provocation was all along there, and his resentment had never before mastered him so as to make him lose his self-control. The test that the mode of resentment should bear reasonable relationship to the provocation can hardly be said to be satisfied. In so far as the instant case adopts the same line of reasoning as the Allahabad judgment it is liable to criticism. Nor can any distinction be founded, as is done in the instant case, on the different social approach to the problem of adultery in this country as justifying a departure from the English law. Even in this country, adultery is not a matter attracting punishment for the woman. In the instant case, the husband had found the wife in *flagrante delicto*. He assaulted her paramour giving vent to his anger. It was, however, after the lapse of a long time, that, while the husband and wife were sitting opposite the police station waiting for it to open to enable the husband to comply with a summons to be present there, the husband implored his wife to give up her association with her paramour. On her refusing to do so stating impudently that she would continue in her conduct, and abusing him he took out a knife and stabbed her as a result of which she died. What happened in front of the police station might have fanned the flame smouldering in his heart against her. But it is rather difficult to regard it as a grave and sudden provocation. In *Mathappa Goundan* v. *State*[5], the accused had all along a suspicion of illicit relationship between his wife and another man. On the day of the occurrence, while his wife was proceeding towards the other man's house, the husband tried to stop her from going. She defied him whereupon he cut her with an aruval fatally. The Court held that in the

1. 1958 An.W.R. 149.
2. 1931 M.W.N. (Cri.) 233.
3. 1956 Cr.L.J. 408.
4. A.I.R. 1925 All. 696.
5. 55 Cr.L.J. 733 : 1953 M.W.N. (Crl.) 309.

circumstances the provocation was neither grave nor sudden. To distinguish that case from the instant case on the ground that in the latter there was actual knowledge of the wife's infidelity in addition to her defiant and inpenitent attitude is not altogether satisfactory. The fact that in the instant case even when the husband found his wife in the act of adultery he did not get provoked to take any action against her shows that that fact had not in any way made him lose his self-control. Again as pointed out in *Dhanno Khan* v. *The State*[1], each little provocation cannot be called grave simply because the consequences ensuing therefrom at the hands of the accused have been grave. The provocation must be such as will upset not merely a hasty, hot-tempered, hyper-sensitive man but would upset also a person of ordinary sense and calmness. The protection afforded by *Exception* 1 to section 300 is the protection for normal beings reacting normally in a given set of circumstances.

THANGAVELU ASARI *v.* LAKSHMI AMMAL, (1957) 2 M.L.J. 132.

In all cases of remarriage by a Hindu widow whether permitted by usage or otherwise the remarriage is held to entail the forfeiture or the divesting of the widow's estate, as the principle upon which a widow took her husband's property was that she was his surviving half. *Murugayi* v. *Viramakali*[2]. The same result ensued under section 2 of the Hindu Widow's Remarriage Act as well. Abjuration of Hinduism by the widow prior to her remarriage was held to leave the position unaffected. The Allahabad High Court had taken a different view on these matters from the other High Courts where remarriage has taken place by virtue of custom or after the widow had become a convert to another religion. That Court held that in such cases there will be no forfeiture of rights either under Hindu law or by reason of section 2 of the Hindu Widow's Remarriage Act. A question of a different nature is whether there will be forfeiture of rights on remarriage where a widow had taken not limited but absolute rights. In *Arunachalam Chetty* v. *Seshiah Chetty*[3], the coparceners of the husband had entered into a settlement with the guardian of a minor widow in respect of her claim to maintenance during all her lifetime at a fixed sum in satisfaction of which a promissory note was executed by them to her uncle as guardian. Later on the widow remarried. A contention was raised that she would in consequence lose her maintenance claim in respect of her first husband's estate and therefore the promissory note could not be enforced. The contention was rejected and the Court held that when once the promissory note and the discharge document had been executed there was no longer any claim or interest of the widow in her husband's property left outstanding for the forfeiture provision to operate. The same question came up for consideration directly in *Bangaru Reddy* v. *Mangammal*[4]. In that case *B* and *S* were two brothers who were members of an undivided family. *S* had married *M* in August, 1937, but a few months later, in April, 1938, he died. His wife *M* was then a minor. In June, *B* executed a deed of settlement in favour of *M* under which she was given some properties absolutely. In September, 1941, *M* married again one *V*. Thereupon it was argued that the remarriage operated as a forefeiture of the rights *M* had obtained under the settlement deed of June, 1938. In repelling the contention Rajamannar, J., observed : " It is clear that this section (section 2 of Act XV of 1856) has no effect on property belonging to the widow absolutely on the date of the remarriage. The rights and interests which she may have in her deceased husband's property by way of maintenance obviously refer to recurring rights, as for example, to payment of maintenance by the enforcement of a charge on her deceased husband's property. In the case of wills and other testamentary dispositions it is only the limited interest that ceases and determines. In my opinion the words as 'if she had then died' supply the criterion for adjudicating on the rights and disabilities of the widow on remarriage. All the results which would follow the remarriage are results which would ensue if she had died on the date of the date of the remarriage. In other words, if she had only a limited and life interest then, that would cease ". The learned Judge added that it

---

1. A.I.R. 1957 All. 317.
2. (1877) I.L.R. 1 Mad. 226.
3. (1938) 2 M.L.J. 701.
4. (1946) 2 M.L.J. 377.

is clear that when property is conveyed absolutely to a widow by her husband's coparceners in full quit and satisfaction of her claim to maintenance such a transaction would not be affected by her remarriage. In the instant case, the widow had taken absolute rights under a compromise decree and later on she had remarried. It was held that section 2 can cause a foreiture only when the widow was in enjoyment of rights and interests of a limited amplitude at the time of her remarriage, and that the theory that every compromise implied the recognition of an antecedent title in every one of the parties taking benefit under it is not universally true. Under the Hindu Succession Act, 1956, a Hindu widow takes her husband's property in full ownership. Hence consistently with the conclusions reached in the instant decision and other cases there can be no forfeiture of the estate under section 2 of Act XV of 1856 : nor will there be any scope for the introduction of the theory of a defeasible estate for a Hindu widow, defeasible on her contracting a remarriage, having regard to the unqualified language of section 14 of the Hindu Succession Act.

KUPPAMMAL *v.* DEVENDRA IYER, (1957) 2 M.L.J. 134.

The settlement of the proclamation of sale and the terms thereof by the Judge is not an adjudication of a right but merely an administrative order, *Rangachariar* v. *The Trinity Bank, Ltd*[1]. The object of the provisions in Order 21, rule 66, Civil Procedure Code, is to afford a security for the fairness of public sales that there has been fair publication and that purchasers would be attracted, *Venkateswara Ethu Naicker* v. *Ayyamma*[2]. Clause (*e*) of Order 21, rule 66, only requires that the proclamation should contain the value of the property as stated by the decree-holder and the judgment-debtor. It is not as if despite this provision a duty is cast on the Court by reason of clause (*f*) to fix its own valuation and to insert it in the sale proclamation. The enactment of clause (*e*) only means that the residuary clause (*f*) covers matters other than the market value of the property. There is no obligation on the executing Court to conduct an enquiry into the value of the property to be sold and mention such value in the sale proclamation, *Srinivasan* v. *Andhra Bank, Ltd*[3]. But in *Arunachalathammal* v. *Kanagasabapathi Pillai*[4], it has been suggested that where there is a wide divergence between the decree-holder's valuation and the judgment-debtor's valuation it is desirable for the Court to have the property valued by an amin and to have such valuation inserted in the sale proclamation. The case under review points out that what the previous decision indicates is only the desirability of adopting such a course and not that there is an obligation to that effect incumbent upon the Court. The instant decision makes it clear that in any event both figures, namely, the figures mentioned by the decree-holder as well as the judgment-debtor cannot be fixed as upset prices.

SRINIVASA SASTRI *v.* SRI SANKARACHARIAR, (1957) 2 M.L.J. 144.

Section 48, Civil Procedure Code, requires that the application for execution should be presented in all circumstances before the lapse of twelve years from the date of the decree. It is the presentation of the application within the prescribed period that matters. The period of limitation found in the section cannot be curtailed by delays that may be caused by the machinery provided in the Civil Procedure Code for the transfer of decrees. Where an application for execution and transfer of the decree is filed in the Court which passed the decree within twelve years thereof, and during the pendency of such application an application for the execution of the decree is also filed in the transferee Court within that period, the execution of the decree will not be barred under section 48 although the actual order for transfer and the certificate of non-satisfaction of the decree were signed and sent to the transferee Court after twelve years from the date of the decree, *Anantha Kumar* v. *Surendra Kumar*[5]. In *Arunachalam* v. *Lingiah*[6], the facts were similar. An application for execution had

1. (1948) 1 M.L.J. 61.
2. (1950) 1 M.L.J. 22.
3. (1948) 2 M.L.J. 569.
4. (1955) 1 M.L.J. 285.
5. I.L.R. (1948) 1 Cal. 475 : A.I.R. 1947 Cal. 424.
6. (1952) 2 M.L.J. 347.

been filed in the transferee Court on July 12, 1946, before the order for transmission of the decree to that Court had been passed by the Court which had passed the decree. But the actual order for transmission was made on July 13, 1946, within twelve years from the date of the decree. It was held that in the circumstances, the application in the transferee Court was a valid and competent application that could be acted upon. If, however, the order of transmission of the decree for execution had been passed after the expiry of twelve years from the date of the decree, the fact that an execution application had been filed in the transferee Court before the expiry of twelve years will not avail to save the decree-holder from the bar of section 48, Civil Procedure Code, *Madali Adamma* v. *Venkatasubbayya*[1], *Manikam* v. *Ramaswami*[2]. In the instant case, the order of transmission had been made after expiry of twelve years from the date of the decree, with the result that the application had to be held to be time-barred.

RANGASWAMI REDDI *v.* DORAISWAMI REDDI, (1957) 2 M.L.J. 196.

The repercussions of a material alteration of a promissory note by the plaintiff upon the recoverability of the consideration for the instrument have been examined from time to time by Courts in England as well as in India. In *Davidson* v. *Cooper*[3], Lord Denman C.J., observed that a party who has the custody of an instrument made for his benefit is bound to preserve it in its original state. In *Gardner* v. *Walsh*[4], Lord Campbell, C.J., pointed out that " the defendant is discharged from the liability if the altered instrument, supposing it to be genuine, would operate differently from the original instrument, whether the alteration be or be not to his prejudice". These decisions signify that *any* alteration of the instrument will disqualify the plaintiff from recovering irrespective of the question of prejudice or absence of it. If, however, the alteration had been made by a stranger the plaintiff will not be affected. In *Hutchins* v. *Scott*[5], Alderson, B, stated : " It is difficult to understand why an alteration by a stranger should in any case avoid the deed, why the tortious act of a third person should affect the two parties to it unless the alteration goes to the length of making it doubtful what the deed originally was or what the parties meant ". The same principle was laid down in *Hong Kong and Shanghai Bank* v. *Lo Lan Shi*[6]. In that case with reference to the provisions of the Bills of Exchange Ordinance, 1885 of Hong Kong, Lord Buckmaster observed : " Both the history of the law which this section enunciates and the terms of the section itself show that it relates only to alterations effected by the will of the persons by whom or under whose directions they are made, and that it does not apply to a change due to pure accident ". In India, section 87 of the Negotiable Instruments Act had laid down that any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made to carry out the common intention of the original parties. Thus for the section to be attracted the alteration must be material and made without the consent of the other party. In *Govindaswami* v. *Kuppuswami*[7], the suit was to recover the amount due on a bond executed by the defendant on September 11, 1882. The date had been altered to September, 25 while the bond was admittedly in the custody of the plaintiff. In holding that the bond became void by reason of the material alteration and the document could not be received as evidence of the debt inasmuch as the contract between the parties had been reduced to writing and the plaintiff can recover only on the writing itself but not outside it, the Court observed : " The contract between the parties having been reduced to writing and the only ground of action disclosed by the plaint being that which is founded upon the altered instrument the plaintiff can only recover upon the writing. But it is undoubted law that the plaintiff cannot recover upon the written contract because it has been altered in a material part. Nor can the document be received in evidence

1. (1933) 65 M.L.J. 137 : I.L.R. 56 Mad. 692.
2. (1944) 2 M.L.J. 403.
3. (1844) 13 M. & W. 343 : 153 E.R. 142.
4. (1855) 5 E. & B. 83 : 119 E. R. 412.
5. (1837) 2 M. & W. 809 : 150 E.R. 984.
6. L.R. (1928) A.C. 181 (P.C.).
7. (1889) I.L.R. 12 Mad. 239.

of the debt. . . In the present case, the suit is not based on any antecedent transaction for which the instrument was given as security, nor did the execution of the instrument vest in the plaintiff any estate or right of the existence of which the deed would be evidence ". The decision makes it clear that (*a*) material alteration precludes the party from enforcing the instrument, (*b*) the instrument cannot be received in evidence to prove the terms of the contract between the parties, and (*c*) it may be a different matter if the suit was in respect of an antecedent loan for which the instrument is security or evidence. Where the material alteration was not made by the plaintiff but by some one else, then, the plaintiff's rights will remain unaffected. In *Krushnacharana Padhi* v. *Gourochandro Dyano Sumanto*[1], the alteration in a promissory note had been made during the period when the plaintiff was still a minor. Abdur Rahman, J., held that the alterations referred to in section 87 of the Negotiable Instruments Act referred to deliberate alteration by a party to the instrument or by one on whom his interest has devolved and not by a stranger, particularly when no conduct could be imputed to the party in whose interest the alteration has been effected or from which either his complicity, laches or negligence may be inferred. This statement of the law was confirmed on appeal. After adverting to Lord Buckmaster's remarks in the *Hong Kong and Shanghai Bank Case*,[2] Leach C.J., observed : "If a material alteration which is the result of an accident does not bring the instrument within the mischief of the section, surely the same must apply where a material alteration had been made by a meddlesome or maliciously minded stranger without the consent of the holder of the instrument and without any fraud or negligence on his part. To hold otherwise would mean the doing of grave injustice to an innocent party and this could never have been the intention of the Legislature in inserting section 87 in the Negotiable Instruments Act "[3].

The question has been raised sometimes whether when the instrument evidencing the terms of a contract has become void by reason of a material alteration in the instrument it is still not possible for the plaintiff to recover from the other party thereto any advantage which that party, might have received in pursuance of the contract, under section 65 of the Contract Act. That section lays down that when an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. In *Chitturi Suriah* v. *Boddu Ramayya*[4], a sum of Rs. 800 had been advanced to the defendant by the plaintiff on an agreement of January, 9, 1910, to supply 300 bags of paddy at Rs. 3-11-0 per bag. The defendant could not perform his part of the contract. On August 26, 1910, he returned Rs. 400 to the plaintiff. In regard to the remaining Rs. 400 the defendant said that the plaintiff had agreed to accept Rs. 150 in full quit and satisfaction. In a suit by the plaintiff for recovery of the entire balance it was found that in the ledger in which the terms of the contract were entered there was a material alteration. In holding that because of the last fact the plaintiff could neither enforce the contract nor recover any sum as damages, a decree was, however, given for the sum of Rs. 400, the admittedly unreturned part of the advance. The conclusion was based in part on the admission of the defendant and partly on *Illustration* (*c*) to section 65. Similarly, in *Anantha Rao* v. *Surayya*[5], while affirming the principle that where a party to a written contract has made a material alteration of the terms without the knowledge and consent of the other party the former cannot enforce the contract, it was at the same time held that any advance which had been made and of which the defendant had not denied liability could be recovered. Thus in both the above cases the directions to return the advance was rested on the admission of party and was not by way of enforcement of the contract. In *Krushanacharana Padhi's Case*[1], however, Abdur Rahman, J., observed in regard to the recovery of the consideration of the instrument

1. (1939) 2 M.L.J. 686.
2. L.R. (1928) A.C. 181 (P.C.).
3. (1941) 1 M.L.J. 153 : I.L.R. (1941) Mad. 295.
4. (1915) M.W.N. 150.
5. (1919) 38 M.L.J. 256 : I.L.R. 43 Mad. 793.

" One may not be able to enforce the terms contained in the instrument but there can be no objection to the Court looking at it and granting the relief on the basis as if the document had not come into existence. The promissory note having become void, the defendant who had received an advantage under the instrument is bound to restore it or to make compensation for it. There seems to be no reason why the Court should not act in such a case on the principle embodied in section 65 of the Contract Act ". It is difficult to see how, when the instrument has become void by reason of a material alteration in its terms, and its terms in consequence had become unenforceable, the remedy could be had as it were by the backdoor, since it is not possible for the plaintiff to let in evidence of the terms of the Contract in any other way by reason of the principle in section 91 of the Evidence Act. Section 65 of the Contract Act cannot apply because what becomes void by reason of the material alteration is the instrument embodying the terms of the Contract and not the contract itself. The instant case points out that if the loan evidenced by the note had been advanced on an earlier date and the note had been executed subsequently, the note may be treated as an acknowledgment of the loan and as security, for it and the plaintiff may obtain a decree on the loan despite the note becoming unenforceable on account of the material alteration. But where the money was advanced only at the time of the note section 91 of the evidence Act will bar the admission of evidence *aliunde* to prove the passing of consideration.

THE INDIAN INSURANCE & BANKING CORPORATION, LTD., SALEM *v.* PARAMASIVA MUDALIAR, (1957) 2 M.L.J. 256.

Under section 70 of the Transfer of Property Act, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to accessions to the property. It would follow that a purchaser in execution of the mortgage decree also will have the same right. To encourage trade, in England, the principle is relaxed to some extent as regards trade fixtures. It is however confined to cases arising out of the relation of landlord and tenant and does not apply where the person who annexes the fixture is the owner of the soil whether the annexation of the fixture was for a permanent purpose and for the better enjoyment of the land or for the purpose of trade or manufacture, *Fisher* v. *Dixon*[1], *Mather* v. *Fraser*[2], *Cullwick* v. *Swindell*[3]. In India, the English law rules as to fixtures do not in terms apply. It is essentially a question of the intention of the parties as to what passes under a transfer—*see* section 8, Transfer of Property Act. In *Satyanarayanamurthi* v. *Gangayya*[4], it was observed : " We are prepared to assume that in certain circumstances, machinery existing in the mortgaged premises on the date of the mortgage and even machinery subsequently installed there may pass under a mortgage of premises. . . It may not always be possible to treat the machinery brought into a building as an ' accession ' within the meaning of sections 63 and 70 of the Transfer of Property Act. It may in some cases become necessary to consider how far the definition of the expression ' attached to the earth ' in section 3 of the Transfer of Property Act will bear upon the decision of the question ". If, as suggested, it is a question of fact the relevant factors in ascertaining the intention of the parties will be the extent of annexation and the object of it. In *Veerappa* v. *Ma Tin*[5], it was held that machinery in a mortgaged building will not become a part of the security unless it is attached to the building for the permanent beneficial enjoyment thereof. In *Narayan Sa* v. *Balagurusami Nadar*[6], the question was what passed to an execution purchaser, the premises sold having been described as " distillery buildings ". It was held that the distillery vats were movables having been brought in for trade purposes and not for the beneficial enjoyment of the building. The Court observed : " In cases where business is carried on in the premises and the sale is only of the premises and not of the business as a going concern or the premises together with the fixtures or machinery, *prima facie* all

1. (1845) 12 Cl. & F. 312.
2. (1856) 2 K. & J. 536.
3. 1860 L.R. 3 Eq. 249.
4. (1939) 1 M.L.J. 692, 694.
5. (1925) 68 I.C. 1011: A.I.R. 1925 Rang. 250.
6. (1923) 45 M.L.J. 385.

that the purchaser is entitled to are the buildings. It can hardly be the intention of the parties when they sell the buildings alone without reference to the machinery or business that the purchaser should get the valuable machinery in the buildings by calling them fixtures and by claiming to get them under that head". In the case under notice, the property sold had been described as "municipal S. No. 222-B1, together with the cinema theatre building being built on dates of suit mortgages and subsequently completed and named 'Shanmugha Talkies' with compound walls all round". The question at issue was whether it would include what had been brought into the premises for the purpose of running a cinema in the building, and in particular 94 ceiling boards and 4 exhaust fans. It was held that what was sold was only the building and not the theatre as a going concern, that therefore the articles in question cannot be regarded as attached to the building and forming part of it, and that the purchaser in execution of the mortgage decree would not be entitled to the same.

CHINNAPPA CHETTY *v.* GOPALA CHETTY & BROS., (1953) 2 M.L.J. 269.

The *raison d'etre* behind the judgment-debtor being allowed to apply for the setting aside of an execution sale even where he had subsequently to the sale sold away the property has been vividly explained in *Sundaram* v. *Mayusa Maruthar*[1]. Wallis, C.J., observed in that case: "Section 310-A was introduced into the Civil Procedure Code, in the interests of the judgment-debtor to protect him from loosing his property by a Court sale at an under-value as too often happens. Now, so far as the judgment-debtor's property is concerned, his interest in setting aside the Court sale is just as great when he has effected a private sale after attachment as when he has not. On setting aside the Court sale, if he has not effected a private sale, he gets back the property itself; if he has effected a private sale after the attachment he gets the price into which he has converted the property. If he fails to set aside the Court sale, the private sale goes off and he gets in neither the property nor the price. The right given him by the Code puts him much in the position of a mortgagor and he loses his equity of redemption unless the sale is set aside. He therefore retains a clear interest in setting aside the sale". It was also held that the purchaser from the judgment-debtor cannot apply to set aside the execution sale under that provision. In 1936, Order 21, rule 89, was amended providing that where immovable property was sold in execution of a decree the judgment-debtor or any person holding an interest in the property may apply to have the sale set aside. In *Lakshminarasamma* v. *Satyanarayana*[2], it was held that a person buying the property from the judgment-debtor subsequent to the Court sale will under the amended Order 21, rule 89, be a person holding an interest in the property for the purpose of applying to set aside the sale. In the instant case it was contended that in view of the fact that such purchaser had now been granted the right to apply to set aside the sale the judgment-debtor has no longer any need for the right for himself and therefore should be deemed to have lost his right to apply under Order 21, rule 89. The contention was repelled as untenable mainly in view of the fact that the term 'judgment-debtor' is expressly retained in the rule and not dropped despite its amendment.

[END OF VOLUME (1958) 1 M.L.J.].

---

1. (1921) 40 M.L.J. 497: I.L.R. 44 Mad. 554 (F.B.). 2. (1943) 2 M.L.J. 151.

THE

MADRAS LAW JOURNAL

I] JANUARY [1958

NOTES OF RECENT CASES.

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ. *27th November*, 1957.

Sardar Syedna Tehar *v.* State of Bombay. C.A. No. 99 of 1954.

Constitution of India (1950), *Articles* 132 *and* 133—*Certificate of fitness for appeal—If can be granted in respect of interlocutory orders—Appeal not competent under Article* 132 —*Grant of certificate—Effect.*

"We are clearly of the opinion that the appeal is not competent under Article 132 of the Constitution and the fact that the certificate has been given does not alter the position. It is said that the certificate is also under Article 133 of the Constitution, but under that Article also, an appeal lies only against judgments, decrees and final orders and so certificate could not be granted in respect of the interlocutory finding."

1948 P.C. 66 considered.

N. C. Chatterjee, for Appellant.

P. A. Mehta, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ. *3rd December*, 1957.

P. Balakotiah *v.* Union of India. C.As. Nos. 46-48 of 1956.

Railway Services (*Safeguarding of National Security Rules*, 1949)—*Constitution of India* (1950), *Articles* 14 *and* 19 (1) (*c*) *and* 311.

The Railway Services (Safeguarding of National Security) Rules, 1949, did not contravene the provisions of Articles 14, 19 (1) (*c*) and 311 of the Constitution.

The order terminating the services under rule 3 of the Security Rules stands on the same footing as an order of discharge under rule 148 and it is neither one of dismissal nor of removal within the meaning of Article 311.

H. J. Umrigar, for Appellants in C.A. Nos. 46 and 47 of 1956.

D. L. Jiwan, for Appellant in C.A. No. 48 of 1956.

Ganapathi Aiyar, for Respondent.

G. R. *Appeals dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam, and J. L. Kapur, JJ. 3*rd December*, 1957.

S. A. Venkataraman *v.* State. Cr. A. No. 130 of 1956.

Prevention of Corruption Act (II of 1947), *section* 6—*Scope—A public servant—If includes one who has ceased to be in service—Previous sanction—If essential for taking congnizance of offence committed by such person.*

Section 6 of the Prevention of Corruption Act was not applicable to a person who had ceased to be a public servant at the time when the Court was asked to take cognizance of the case against him. Section 6 certainly does prohibit the taking cognizance of his offence without a previous sanction, while he is still a public servant, but that prohibition does not continue after he has ceased to be a public servant

N. C. Chatterjee, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and J. L. Kapur, JJ. 3*rd December*, 1957.

V. D. Jingan *v.* State of U.P. Cr. A. No. 25 of 1956.

Prevention of Corruption Act (II of 1947), *section* 6—*Criminal Procedure Code (V of* 1898), *sections* 173 *and* 561-*A*—*Scope.*

A withdrawal of a case resulting merely in a discharge did not prevent the prosecution being recommenced on a fresh complaint. When the fresh complaint was filed the appellant was not a public servant and, therefore, the Court could take cognizance without a previous sanction under section 6 of the Prevention of Corruption Act.

J. G. Sethi, for Appellant.

G. C. Mathur, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ. 6*th December*, 1957.

Jagannath Behera *v.* Raja Harihar Singh. C.A. No. 309 of 1955.

Orissa Tenants Protection Act (III of 1948), *and Article* 19 *of the Constitution—Jurisdiction of revenue officer.*

"The revenue officer would have jurisdiction to entertain the dispute between the appellants and the respondent which arose out of his action in evicting them from his lands."

G. C. Mathur, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ. 13*th December*, 1957.

Khem Chand *v.* Union of India. C.A. No. 353 of 1957.

Constitution of India (1950), *Article* 311 (2)—*Government of India Act*, 1935—*Section* 240—*Scope.*

Before a Government servant is dismissed or removed or reduced in rank, he should be given an opportunity to not only defend himself against the charges levelled

against him by cross-examining witnesses, but should have also an opportunity to make his representation against the punishment proposed to be inflicted on him. It is true that Article 311 (2) does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity, but such an opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the Government servant should have the opportunity to say if that be his case, that he has not been guilty of any misconduct to merit any punishment at all, and also that the particular punishment proposed to be given is much more drastic and severe than he deserves.

1945 F.C.R. 103 : (1945) 2 M.L.J. 270 : 1945 F.L.J. 129 (F.C.), considered.

J. Sharma, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
18th December, 1957.

State of Kerala *v.* P. J. Joseph.
C.A. No. 172 of 1954.

Cochin Abkari Act (1077) 1902—*Constitutional validity—Articles* 14 *and* 19 (1) (*g*) *of the Constitution of India—Impost not authorised by law.*

An impost not authorized by law, could not possibly be regarded as a reasonable restriction and must, therefore, infringe the right of the respondent to carry on his business which was guaranteed to him by Article 19 (1) (*g*) of the Constitution. The impost was nothing but an executive order, if an order it was, which had no authority of law to support it and was, therefore, an illegal imposition.

U. M. Isaac with *S. Bahadur*, for Appellant.

P. Govindan Nair, with *K. Pillai* for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur, and P. B. Gajendragadkar, JJ.
18th December, 1957.

C. I. Spg. & Mfg. Co. *v.* Wardha Municipality.
C.A. No. 119 of 1953.

Interpretation of Statutes—C. P. & Berar Municipalities Act (II of 1922), *sections* 66 (1) *and* 83 (2)—*Terminal Tax—"Imported into or exported from limits of Municipality."*

In construing the words of a statute if there were two possible interpretations, then effect was to be given to the one that favoured the citizen and not the one that imposed a burden on him.

C. K. Daphtary, Solicitor-General of India, for Appellant.

A. V. Viswanath Shastri, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

N. H. Bhagwati, T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
20th December, 1957.

Bombay Dyeing & Mfg. Co. *v.* State.
C.A. No. 167 of 1954.

Bombay Labour Welfare Fund Act of 1953, *section* 3 (2) (*a*) *and* (*b*)—*Constitutional validity—Articles* 19 (1) (*f*) *and* 31 (2) *of the Constitution—Payment of Wages Act* (*IV of* 1936), *sections* 8 *and* 15—*Contract Act* (*IX of* 1872), *section* 56—*Limitation Act.*

"The real point for determination is whether on payments of the amounts in accordance with section 3 (1) of the Bombay Labour Welfare Fund Act, the employer gets a discharge of his obligations to the employees in respect of wages due to them.

We are of the opinion that even if the matter is governed by section 56 of the Contract Act the employer is no more discharged than by the operation of the bar of limitation under section 15 of the Payment of Wages Act or the provisions of the Limitation Act. In this view it must be held that the provisions of the impugned Act are unconstitutional in that they take away the property of the appellant in violation of either Article 19 (1) (*f*) or Article 31 (2) of the Constitution." The Court held that section 3 (2) (*b*) of the Act was void and section 3 (2) (*a*) was valid and the appeal was therefore partially allowed.

R. J. Kohla, for Appellants.

H. M. Seervai, for Respondents.

G.R. *Appeal partially allowed.*

Ramaswami, J.
4th November, 1957.

Krishnamurthi, *In re.*
S. R. No. 27517 of 1957.

Court-fees—Refund of—Memorandum of Appeal with deficit Court-fee—Returned and not re-presented—Appeal becoming unnecessary—Refund of Court-fee paid—When permissible.

Where an appeal which has been registered and numbered is withdrawn as having become unnecessary no refund of Court-fee can be ordered.

I.L.R. 57 Mad. 1028 : 67 M.L.J. 321 and (1937) 2 M.L.J. 788, referred.

But where an appeal was presented with a deficit Court-fee and was returned but was not re-presented as having become unnecessary, though no refund of Court fee could be ordered by Court under the previous Court-fees Act, still the Court could issue a certificate that the appeal was not numbered and direct the appellant to apply to the Revenue Authorities for ex-gratia refund as in the case of spoiled stamps.

[Policy of the Legislature that refund in such cases is just and equitable as indicated by section 66 (1) of the Madras Court-fees and Suits Valuation Act, 1955, pointed out].

(1950) 1 M.L.J. 222, followed.

T. S. Santhanam, for Appellant.

R.M. *Orders accordingly.*

Somasundaram, J.
15th November, 1957.

Public Prosecutor *v.*
Sami Venkataraman.
Crl. Appeal No. 95 of 1957.

Prevention of Food Adulteration Act (XXXVII of 1954), *sections* 10 (7) *and* 16 (1) (*b*) *—Preventing an Inspector from taking sample—When an offence—Necessity for witnesses —When arises.*

In order to make out a case that an offence under section 16 (1) (*b*) of the Prevention of Food Adulteration Act has been committed it should be established that the articles of food, a sample of which was sought to be taken by the Inspector and which was prevented, was intended for sale. If the article was in a shop then there would be a presumption that it was intended for sale. But where it was in a house it should be proved that it was intended for sale. Only then the prevention of an Inspector from taking sample would amount to an offence under section 16 (1) (*b*) of the Act. Section 10 (7) of the Act relating to witnesses being taken will be attracted only when a sample is taken. Where the Inspector is prevented from

taking the sample there is no question of any witnesses being taken under section 10 (7) of the Act.

The Public Prosecutor (*P. S. Kailasam*), for Appellant.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Appeal dismissed.*

[FULL BENCH.]

Rajagopalan, O.C.J., Ramaswami and Rajagopala Ayyangar, JJ.
18*th November*, 1957.

Board of Revenue, Madras *v.* Madalai Nadar and Co.
R.C. No. 107 of 1956.

Stamp Act (*II of* 1899), *Articles* 19 *and* 39 (*b*) *of Schedule* 1-*A* (*Madras Amendment*)—*Deed of dissolution of partnership—Partner relinquishing his interest in the partnership properties—If amounts to conveyance.*

A deed of dissolution of partnership which recites that the outgoing partner shall have no interest whatsoever in any of the properties of the partnership and provides for the ascertainment of the profits payable to such partner cannot be said to amount also to a conveyance deed of the interest of the outgoing partner. Any payment made to such a partner when the partnership was in existence cannot be construed to be the consideration to render the deed of dissolution of partnership as one of conveyance. Such a deed is chargeable to stamp duty only under Article 39 (*b*) of Schedule 1-A of the Stamp Act and not under Article 19.

I.L.R. 32 Bom. 505 ; (1955) 2 M.L.J. 166, distinguished.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Petitioner.

M. Subbaroya Ayyar, V. Sethuraman, S. Padmanabhan and *S. V. Subramaniam*, for Respondent.

R.M. ——— *Reference answered accordingly.*

Ramaswami, J.
20*th November*, 1957.

Janakiram *v.* Nagammal.
C.R.P. No. 543 of 1957.

Madras Buildings Lease and Rent Control Act (*XXV of* 1949), *section* 7 (2) (*iv*)—*Acts of nuisance—Use of indecent and vulgar language by tenant—If a ground for eviction—Sections* 12 *and* 12-*B—Appellate authority—Duty to give reasons for interfering with orders of Rent Controller.*

Where a tenant and her daughter indulge in quarrels among themselves using vulgar and indecent language and abuse other tenants in indecent language, such conduct will amount to nuisance entailing eviction under section 7 (2) (*iv*) of the Madras Buildings Lease and Rent Control Act.

Where the Rent Controller has discussed the evidence and has given reasons for his order, it is not proper for the appellate authority under Act to set aside the order by merely saying that the evidence is vague. It is the duty of the appellate authority, while interfering with an order of the Rent Controller, to give his reasons for not accepting the evidence on record.

T. R. Sundaram, for Petitioner.

T. M. Venugopala Mudaliar, for Respondent.

R.M. ——— *Petition allowed.*

Somasundaram, J.
20*th November*, 1957.

Meenal *v.* Subbiah Naidu.
Crl. Appeal No. 417 of 1957.

Madras District Police Act (*V of* 1861), *section* 53—*Prior notice of intended action against police official—Scope of provision.*

Section 53 of the Madras District Police Act refers to two kinds of proceedings, *viz.*, actions and prosecutions that may be brought against a police officer by persons complaining of their conduct. Actions are treated as different from prosecutions. While the period of limitation of three months before which the proceedings should

commence apply both to actions and prosecutions the requirement as to one month's notice applies only to actions, which mean civil actions as distinguished from prosecutions which are criminal in nature. In respect of criminal prosecutions no such notice is necessary under section 53 of the Act.

K. Narayanaswami Mudaliar and *N. Thirugnanasundaram*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*) for Respondent.

R.M. —— *Appeal allowed.*

Ramaswami, J.
25th November, 1957.

Narayanaswami Chettiar, *In re.*
S.R. No. 26480 of 1957.

Civil Procedure Code (V of 1908), Order 20, rule 11 (2) and section 47—Order on an application for payment of decree amount in instalments—If appealable under section 47 of the Code.

An order passed on an application under Order 20, rule 11 (2), Code of Civil Procedure (as amended in Madras) permitting a judgment-debtor to pay the decree amount in instalments, is one passed in exercise of the judicial discretion of the Court after hearing both sides and as such an appeal against such an order would lie under section 47 of the Code.

4 Rang. 24; A.I.R. 1931 Rang. 152; A.I.R. 1943 Nag. 437, followed.

N. K. Mohanarangam Pillai and *N. K. Pattabiraman*, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. —— *Office note answered accordingly.*

Ramaswami, J.
11th December, 1957.

Nallasivam Chettiar *v.*
Avudayammal.
C.M.P. No. 8133 of 1957
(S.A. No. 1056 of 1954).

Practice—Directions given by the High Court (in a pending second appeal) to the lower Court to determine the quantum of money to be paid to a claimant—Subsequent disposal of the second appeal itself—If takes away the power of the lower Court to enquire into the earlier application.

In a second appeal pending before it the High Court passed orders on a Civil Miscellaneous Petition directing the lower Court to determine the quantum of marriage expenses to be provided for one of the defendants out of the joint family funds. During the pendency of the proceedings in the lower Court in pursuance of the aforesaid direction the second appeal itself was disposed of finally by the High Court. It was contended that the disposal of the second appeal automatically terminates the proceedings before the lower Court commenced in pursuance of the earlier directions of the High Court.

Held that the lower Court can proceed and complete the enquiry in pursuance of the earlier directions even though the main appeal itself has been disposed of by the High Court. If any party is aggrieved by any order of the lower Court in that behalf it is open to them to file an appeal against the said order treating it as an interim decree or agitate the matter in an appeal against the final decree as the circumstances may require.

Section 151, Civil Procedure Code, does not enable a party to file an application in the High Court, after the disposal of the second appeal, for directions that the lower Court is not competent to proceed with the inquiry in pursuance of the earlier directions.

I.L.R. 35 All. 159; (1951) 2 M.L.J. 176; I.L.R. 57 All. 977, referred.

R. Desikachari, T. S. Arunachalam, Fyzee Mohammad and *N. K. Panchapakesan*, for Petitioner.

A. Balasubramaniam (*amicus curiae*), for Respondent.

R.M. —— *Petition dismissed.*

Basheer Ahmed Sayeed and Subramanyam, JJ.
30th October, 1957.

Venkataraman and Co. *v.* Union of India.
Appeal No. 957 of 1953.

Railways Act (IX of 1890), sections 55 *and* 56 *and Condition* 10 *of the Railway Receipt—Right of Railway Management to sell the goods consigned—When can be exercised—Duty to give notice—If can be contracted out of—Suit for damages for conversion—Limitation for—Limitation Act (IX of* 1908) *Articles* 31, 36 *and* 48.

A Railway administration has a right to sell the goods consigned to them for carriage only in accordance with the provisions of the law authorising them in that behalf. Any sale of the goods delivered to them contrary to the provisions of the Statute will be without legal authority and wrongful and the Railway will be guilty of conversion. It is not open to the Railway to contract itself out of the statutory obligations.

Where the goods consigned remain un-claimed and the owner of the goods is known the Railway is under a statutory duty to give the notice required by section 56 (1) of the Railways Act before exercising their right of sale. The right to sell will accrue to them only when such a notice is given. Any sale in contravention of the provisions of the section will be invalid. The procedure to be followed in regard to the sale is laid down under section 55 (2) of the Act. The fact that the Railway is authorised, under section 55 or condition 10 of the forwarding note, in certain cases to sell the goods in their custody for non-payment of charges does not mean that the railway is at liberty to sell the goods of a consignor without any notice to him merely because the goods are likely to get deteriorated. In cases of perishables a sale without notice might be justified only if the right to sell has accrued under section 56 of the Act.

A suit for damages for wrongful conversion will be governed by Article 31 of the Limitation Act and not Article 48.

Quaere.—Whether Art. 36 can apply?

A.I.R. 1934 Pat. 507 Diff.

29 M.L.J. 342 : I.L.R. 39 Mad. 1 (F.B.) Ref.

V. C. Gopalaratnam and *L. V. Krishnaswami Ayyar* for Appellant.

S. S. Ramachandra Ayyar for Respondent.

R.M. — *Decree in part.*

Ganapatia Pillai, J.
8th November, 1957.

Muthukrishna *v.* Meenakshi.
S.A. No. 16 of 1956.

Husband and Wife—Joint possession and enjoyment of properties as per compromise decree for maintenance and separate residence—Subsequent resumption of cohabitation—Effect of—Pending suit for partition and possession on the basis of the decree for separate residence and maintenance—Sustainability.

A suit instituted by a wife against her husband for separate maintenance was compromised granting the wife a right to joint possession and enjoyment of certain properties, along with her husband and if such joint possession is impracticable, a right to partition and separate possession. On this basis the wife filed a suit for partition and pending this the wife resumed cohabitation with her husband. It was contended that the resumption of cohabitation has rendered the decree for separate maintenance ineffective, and as such the suit for partition has to dismissed *in limine*.

Held that a resumption of cohabitation with the husband would generally be sufficient to render ineffective a decree for separate maintenance obtained by the wife against her husband as the very basis of the decree has ceased to exist and it is not necessary to show further that the cause which rendered such a decree necessary has also been removed. The position may however be different in cases where under a tentative arrangement, with no intention of abandoning her rights under the decree, the wife temporarily agrees to live with her husband. Even so in cases where the union was brought about by deceit or compulsion.

(1941) 2 M.L.J. 263 : I.L.R. 1942 Mad. 24 : (1948) 2 M.L.J. 519 : I.L.R. 1949 Mad. 613, Referred.

(1956) 2 M.L.J. 610, Followed.

(1943) 2 M.L.J. 359 : (1948) 2 M.L.J. 579, Dist.

The subsequent suit for partition based on such a decree, which has since become ineffective, has to be dismissed. It is not necessary in such cases that an enquiry should be held in that suit and the decree for separate maintenance should be recorded as satisfied before it could be pleaded in defence in the subsequent suit for partition.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Appellant.

K. Kalyanasundaram, for Respondent.

R.M. — *Appeal allowed : Leave granted.*

Rajagopala Ayyangar, J.
12th November, 1957.

Manickavasagam *v.* I.T.O. Coimbatore.
W.P. Nos. 886, etc., of 1956.

Income-tax Act (*XI of* 1922), *section* 35—*Scope of.*

The return of an assessee included the dividends received from a particular company declared for particular year of account of the company and the assessment order was based on that return. But during the same accounting year of the assessee he was deemed to have received another item of dividend from the same company. But there was no error in the assessment order in so far as the return submitted for that year.

Held that the non-inclusion of any item in a return leading to under-assessment could be rectified only by recourse to section 34 of the Income-tax Act and not to section 35 which is applicable only to cases of errors apparent from the record. Errors in assessment due to non-inclusion of income from an entire source or non-inclusion of certain items under a particular source are not errors rectifiable under section 35 of the Act. But where the original order of assessment was based on a particular assumption which is proved to be erroneous later it could be rectified by recourse to section 35 of the Act.

M. Subbaroya Ayyar, V. Sethuraman and *S. Padmanabhan* for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. — *Orders accordingly.*

Ganapatia Pillai, J.
13th November, 1957.

Current Circulating Library *v.* Raja Veluggoti Yadandra.
C.R.P. No. 1486 of 1956.

Madras Buildings (*Lease and Rent Control*) *Act* (*XXV of* 1949), *section* 7 (2) (*ii*) (*a*)—*Sub-letting by tenant without consent—What amounts to—Equitable mortgagee granting lease—Mortgagor owner—How far bound by the terms after redemption.*

An equitable mortgagee of a premises, with a right to let in tenants on the premises and collect the rents, will be a landlord within the meaning of the Madras Buildings Lease and Rent Control Act. Where a such a landlord grants a general written lawful permission to his tenant to sub-let the demised premises, the mortgagor owner who becomes the landlord after redemption of the mortgage will be bound by the terms of the prior lease. Where the owner mortgagor recognises the tenant and collects the rents, he must be deemed to have ratified the lease originally granted by the equitable mortgagee.

Quaere.—Whether the category of persons who are defined to be 'landlords' under section 2 (3) of the Act would be the same as the category of landlords indicated by section 7 of the Act for purposes of eviction in view of sub-section (7) of section 7?

(1949) 2 M.L.J. 597 : (1950) I M.L.J. 655, referred.

A valid written consent given by a landlord at the time the sub-letting took place will bind his successor.

K. Rajah Ayyar and *V. Seshadri* for Petitioner.

B. Lakshminarayana Reddi for Respondent.

R.M. — *Petition allowed.*

Subramanyam, J.
15th November, 1957.

Nagammal *v.* Govindarajulu.
C.R.P. Nos. 525 etc. of 1957.

Madras City Tenants Protection Act (VI of 1921), *sections* 7-*A*, 8 *and* 9 *and Amending Act (XIX of* 1955), *section* 10 (1)—*Effect of amendment on decrees in ejectment which have not been executed—Tenant—When can take advantage of the Act—Rule of Limitation—Delay—If could be excused—Fair rent—When could be determined.*

It is no doubt true that the benefits of section 9 of the Madras City Tenants Protection Act as amended by Act XIX of 1955 has been made applicable to even cases of tenancy wherein a decree in ejectment has been passed, but has not been executed before the coming into force of the amending Act. But a tenant who seeks to take advantage of the amending provisions has to apply under section 9 of the Act within one month of the coming into force of the Amending Act for a direction that the landlord should sell the land to him. This is a rule of limitation which cannot be relieved against by the Court in the absence of any express provision in the Act.

An application for fixation of a reasonable rent under section 7-A of the Act can be made only by a tenant who has a right to continue in occupation of the land and not by a person against whom an order for eviction has been made.

K. Srinivasan and *K. Shanmugham* for Petitioner.

G. T. Ramanujachari for Respondent.

R.M. —————— *Orders accordingly.*

Rajagopala Ayyangar, J.
19th November, 1957.

Artisan Press *v.* I. T. O. Madras.
W.P. No. 28 of 1956.

Income-tax Act (XI of 1922), *section* 28—*Applicability—Initiation of proceedings for levy of penalty—What amounts to.*

To initiate means 'to originate or to take the first step' A direction by the Income-tax Appellate Tribunal to the office to issue a notice to the assessee to show cause why a penalty under section 28 (1) (*c*) should not be levied is certainly a step in the proceedings for levy of a penalty under the section and the Tribunal will have jurisdiction to continue the proceedings even after the order under section 33 (4) of the Act has been made. The fact that the notice under section 28 (3) was actually dated and despatched at a subsequent date, after the date of the order under section 33 (4), does not affect the validity of the penalty proceedings, if they have been 'initiated' at a time when the Tribunal was seized of the assessment proceedings, thus statisfying the requirements of section 28 (1) of the Act.

(1955) 2 M.L.J. 477, Referred.

G. R. Jagadisan and *T. V. Balakrishnan* for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. —————— *Petition dismissed.*

Ramaswami, J.
20th November, 1957.

Thangiah *v.*
Hanuman Bank (In Liquidation).
S.A. Nos. 425 to 454 of 1955.

Banking Companies Act (X of 1949), *sections* 45-*B and* 45-*C—Transfer of pending proceedings to High Court—Scope of.*

The expression 'relating to winding up' in section 45-B of the Banking Companies Act is wide enough to cover even claims against the company which may not strictly be matters connected with the winding up and the word 'claims' is also of exhaustive significance. Hence a claim of occupancy right made by a tenant against a Banking Company will be a matter relating to winding up and as such, the proceedings will stand transferred to the High Court under section 45-B of the Act.

(Scheme of Legislation explained—Power of Parliament to legislate considered —Case-law reviewed.)

G. R. Jagadisan and *A. R. Ramanathan* for Appellant.

G. N. Chari and *R. Srinivasan* for Respondent.

R.M. ——— *Appeals dismissed: Leave granted.*

Panchapakesa Ayyar and Ganapatia Pillai, JJ. *22nd November*, 1957.

Thangalaxmi *v.* Arunachalam. W.A. No. 96 of 1957.

Elections—Municipal Elections—Tribunals under—Power to allow further particulars.

Though an Election Tribunal created under the law relating to Elections has no inherent or common law powers, like a Court of law or equity and though there is no express statutory provisions in such cases as under the Representation of the People Act, 1951, still the power to allow amendment as under Order 6, rule 17, Civil Procedure Code, which is conferred on such Tribunals will include the power to allow an amendment by way of further particulars. The enumeration of certain provisions of Order 6, rule 17, is not exhaustive but is only illustrative.

Though the statutory provisions under the Representation of the People Act, 1951, relating to Parliamentary elections is not directly applicable to elections under the Municipalities Act, still the principles of that law may be applied to these cases also by analogy. In the absence of express statutory provision it is desirable to apply uniform rules to all elections regarding corrupt practices and irregularities.

(1956) I M.L.J. 40 and (1957) S.C.J. 297 Expl.

W.P. No. 74 of 1953 diff.

W.P. No. 893 of 1953 appl.

G. R. Jagadisan for Appellant.

S. Ramachandra Ayyar and *V. S. Ramakrishnan* for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopalan, O.C.J. and Rajagopala Ayyangar, J. *29th November*, 1957.

Abdul Kassim *v.* I.T.O., Karaikudi. W.P. No. 896 of 1956.

Income-tax Act (XI of 1922), *section* 46 (2)—*Scope of—Recovery of arrears of tax by issue of certificate to the Collector—If applicable to cases of recovery from legal representatives of an assessee.*

In order to attract the provisions of section 46 (2) of the Income-tax Act relating to recovery of tax due from an assessee through the Collector as an arrear of land revenue, two conditions must be satisfied, namely, (1) the amount must be in arrears and (2) the arrears must be due from an assessee. The recovery of the arrears under section 46 (2) of the Act is limited by the same considerations which would decide whether an assessee is in default within the meaning of section 46 (1) of the Act. A legal representative of a deceased assessee, it has been held, is not himself an assessee within the meaning of section 46 (1) of the Act and as such he cannot also be an assessee under section 46 (2). His liability to pay any tax due by the deceased assessee is limited by the possession of assets of the deceased. Hence the Income-tax Officer has no jurisdiction to issue a certificate under section 46 (2) of the Act for recovery of the tax from the legal representative treating him as the assessee.

(1956) 30 I.T.R. 286, referred.

(1956) 29 I.T.R. 708, followed.

M. R. M. Abdul Karim for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. ——— *Certificate set aside.*

Subrahmanyam, J.
29th November, 1957.

Nataraja Pillai and Co., *In re.*
C.R.P. No. 1638 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 9—*Change of name of institution-landlord after an order of eviction is made—Execution of the order under the old name—Permissibility.*

An institution-landlord which has obtained an order of eviction against its tenant, though it subsequently changes its name merely, can continue the old proceedings in execution under the old name itself.

K. S. Ramamurthi and *T. R. Mani* for Petitioner.

R.M. ——— *Petition dismissed*

Panchapakesa Ayyar and Ganapatia Pillai, JJ.
29th November, 1957.

Changalvaroya Chetty *v.* State.
Appeal No. 137, etc., of 1954.

Madras Town Planning Act (VII of 1920), *section* 12—*Acquisition of land—Power of Government to extend the time fixed under—Effect of such extension—Quantum of compensation—Relevant date to decide.*

It is no doubt true that the State Government has the power to extend by notification the time originally fixed under section 12 of the Madras Town Planning Act for purposes of land acquisition as this is only a simpler form of issuing a fresh notification which power they undoubtedly possess. But if the Government resorts to any extension of the time originally fixed, then the market value of the property sought to be acquired has to be decided for purposes of ascertaining the compensation, as on the date of the last order of extension and not the date originally fixed.

A.S. No. 757 of 1950, followed.

I.L.R. 55 Mad. 391 and (1956) 2 M.L.J. 279, followed.

M. Natesan, V. N. Shama Rao, S. Padmanabhan, M. Ranganatha Sastri, M. V. Kapali, and *G. Ramanujam, Subramanian* and *Rajagopal* and *K. G. Manickavasagam* for Appellants.

The Government Pleader (*B. V. Viswanatha Ayyar*), *M. A. Sattar Sayeed, G. K. Raman and C. Rangaswami Ayyangar* for Respondents.

R.M. ——— *Cases remanded.*

Panchapakesa Ayyar and Ganapatia Pillai, JJ.
2nd December, 1957.

Ahmad Mohideen Khan, *In re.*
Crl. M. P's. Nos. 1103 & 1104 of 1957.

Criminal Procedure Code (V of 1898)—*Madras Amendment Act (XXXIV of* 1955)—*Creation of a Sessions Court for Madras—Validity of—Power of Madras Sessions Court to transfer cases from the Court of one Presidency Magistrate to another.*

The Code of Criminal Procedure (Madras Amendment) Act (XXXIV of 1955) is not *ultra vires* the powers of the State Legislature and the constitution of a separate Sessions Court for the city is valid. The Sessions Judge, Madras, can entertain transfer applications regarding cases pending on the file of the Presidency Magistrates.

F. S. Vas and *Messrs. Jan and San* for Petitioner in Cr.M.P. No. 1103 of 1957.

T. M. Kasturi and *Messrs. Jan and San* for Petitioner in Cr.M.P. No. 1104 of 1957.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Public Prosecutor (*P. S. Kailasam*) for Respondents in both.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Narasimhalu Chettiar *v.* Muthuswami Gounder.
4th December, 1957. C.R.P. No. 1328 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955)—*Scheme of the Statute —Suit for arrears of rent in civil Court against tenant within the meaning of the Act—When could lie—Power of civil Court to appoint receiver—Scope of.*

Under the scheme of the Madras Cultivating Tenants Protection Act, 1955, the Revenue Court is vested with the jurisdiction to decide whether a tenant is liable to be evicted from his holding on the ground of failure to pay the arrears of rent. This necessarily means that the Court should first decide whether there is any arrear of rent. When once the Revenue Court decides that there are no arrears it is not open to the landlord to reagitate the matter in a civil Court by a suit for recovery of the alleged arrears of rent. It is of course open to the landlord to file a regular suit in a civil Court in respect of arrears not covered by the Act or in respect of arrears which have been found due by the Revenue Court in the suits or proceedings and which the tenant has failed to pay.

But even in cases where a decree for arrears of rent is obtained by the landlord in a civil Court, the only mode of execution open to the landlord is to apply for attachment of moveables, etc., under the Code of Civil Procedure and not to evict the tenant, if he is otherwise entitled to the protection under the Madras Act XXV of 1955. Even though on principle a receiver may be appointed in such suits the receiver will have no powers to dispossess the cultivating tenant contrary to the provisions of the said Act XXV of 1955.

S. Ramachandra Ayyar and *V. S. Ramakrishna* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *S. Mohan Kumaranamagajam*, *S. Mohan* and *M. Krishna Bharathi* for Respondents.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J. Asher Textiles, *v.* Industrial Tribunal, Coimbatore.
4th December, 1957. W.P. No. 1246 of 1956.

Industrial Disputes Act (XIV of 1947), *section* 33—*Petition by employer seeking permission to punish a workman for misconduct pending arbitration—Duty of Tribunal—Employer stating the nature of punishment proposed to be imposed, if irregular—Petition if liable to be rejected on that ground.*

A petition by the employer to an Industrial Tribunal under section 33 of the Industrial Disputes Act, seeking permission to dismiss a workman pending adjudication, cannot be rejected merely because the employer sought the permission of the tribunal to impose a specific form of punishment, *viz.*, dismissal, instead of generally seeking a permission to punish. On the other hand the section itself contemplates that the management in seeking a permission to punish should state the action they propose to take against the workman, so that the tribunal could consider whether the permission sought for is *bona fide*.

It is no doubt true that it is not within the competence of a tribunal to impose any conditions in granting a permission under section 33 of the Act nor could it substitute a punishment which it considers appropriate. But the severity of the proposed punishment in the context of other facts, might enable a tribunal to draw its own conclusion about the motive of the employer in seeking the permission. Where permission to dismiss a workman is sought on the ground of misconduct and disobedience of lawful orders, and the tribunal finds that the alleged misconduct is proved, it has no jurisdiction to refuse the permission merely because in its opinion the punishment proposed was more severe than what it would have inflicted.

T. T. Srinivasan and *A. N. Rangaswami* for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) and *B. Laxminarayana Reddi* for Respondent.

R.M. ——— *Petition allowed.*

Ramaswami, J. Madurai Municipality *v.* Rangaswami.
5th December, 1957. S.A. No. 423 of 1955.

Madras District Municipalities Act (*V of* 1920), *Schedule V, clauses* (*n*) *and* (*q*)—*Cinder—If coal or combustible or explosive material.*

Cinders cannot be considered as coal nor can it be said to be either a combustible or explosive material. As such cinders will not fall within the items enumerated in either clause (*n*) or clause (*q*) of Schedule V of the Madras District Municipalities Act, the storing or selling of which requires a licence.

L.R. (1891) 1 Q.B. 790 and (1942) 2 M.L.J. 555, followed.

K. Veeraswami for Appellant.

K. V. Srinivasa Ayyar and *S. Sundaram* for Respondent.

R.M. —— *Appeal dismissed.*

Rajagopalan, O.C.J., Rajagopala Ayyangar, J. Gemini Pictures Circuit, *v.* C.I.T.
6th December, 1957. W.P. No. 925 of 1955 and R.C. No. 27 of 1955.

Income-tax Act (*XI of* 1922), *section* 13—*Method of accounting regularly employed—Duty of officer to accept in computing profits—Film industry—Amortisation of the cost of production—Depreciation value calculated at specified percentages for each year on a sliding scale—Adoption of a time basis—Legality—Circulars of C.B.R. D.O.R. Dis. No.* 178—*I.T.* 137, *dated* 13*th May*, 1937 *and C. No.* 9 (48)—*I.T.* 48,*dated* 4*th January*, 1951—*Construction of.*

Where an assessee, a film distributor, was adopting regularly a method of accounting by which he valued his closing stock at the end of each year of his accounts by deducting sepecified percentage of the cost of production towards depreciation (as per the departmental circular issued in that regard) it should normally be accepted by the assessing authorities under section 13 of the Income-tax Act. But the proviso to the section enables the authorities to disregard the method adopted by the assessee, if they are satisfied that the income, profits or gains cannot be properly ascertained in the method of accounting adopted by the assessee. His power can be exercised, not only by the Income-tax Officer in the first instance but also by the Appellate Assistant Commissioner at the stage of appeal.

The departmental circular of the year 1937 no doubt provides for a method of allowing a particular percentage of depreciation on a film taking roughly three years to be the normal life of a film from the standpoint of earning income. But the year contemplated by the circular normally should mean a period of 365 days and not an artificial year, long or short, like the accounting year. Where a film was released for exhibition only a few days prior to the closing of an accounting year of the assessee, it is not open to the assessee to claim the full deductionof 60 per cent. for the first year for purposes of depreciation, as provided in the circular.

It does not, however, mean that when once the method of accounting adopted by the assessee is rejected under the proviso to section 13, the authorities are free to adopt any method they like. The method adopted should be such that it can enable the ascertainment of the true profits of the business. A strict adherence to the 'time rule' indicated in the departmental circular of 1951 for purposes of allowing depreciation will not also help in ascertaining the true profits. It is only an average percentage of the total allowed for a period of twelve months that should be taken into consideration. Any computation of the amortisation rate of a film must take into account the actual collections from the film for the period of its normal life (*viz.*) three years as generally understood, and allow the percentages of depreciation for each period on the total revenue of the film for the period of three years.

(Actual process of arriving at the figure on the basis of the departmental circulars explained—Advantages and disadvantages discussed—Principles indicated.)

R. M. Seshadri and *R. Narayanan* for Petitioner.

C. S. Rama Rao Sahib for Respondent.

R.M. —— *Answers accordingly.*

Ramaswami, J. Alagammai Achi, *In re.*
6th December, 1957. S.R. No. 17869 of 1957.

Practice—Appeal—Limitation for—Computation of time—Decree amended—When gives rise to a fresh starting point of limitation—Limitation Act (IX of 1908), *Article* 156.

Though it is an accepted principle of law that time for purposes of appeal against the decree of a Court which is amended subsequently runs from the date of the amendment, it is not every case of amendment that could give a fresh starting point for limitation. In order to take advantage of the extended period of limitation from the date of the amendment it should be established that the amendment has brought about a substantial change in the relief orginally granted. Where a decree of a particular date is amended subsequently only as regards costs, and an appeal sought to be filed against the said decree seeks to question only the decree as it originally stood and not the question of costs, which was the subject-matter of the amendment, the time for purposes of limitation for the appeal has to be computed only from the date of the original decree and not from the date of the amendment as the subsequent amendment has no relation to the grounds on which the decree is challenged.

Case-law referred.

Per curiam: It may be open to a party in such cases to apply under section 5 of the Limitation Act.

S. Ramachandran and *V. S. Ramakrishnan* for Appellant.

The Government Pleader (*B. V. Viswanatha. Ayyar*) for the State.

R.M. *Orders accordingly.*

Ramaswami, J. Parthasarathy Naicker, *In re.*
9th December, 1957. S.R. No. 32806 of 1957.

Practice—Order of a Civil Court granting sanction to prosecute for perjury—Appealable—If revision lies to the High Court—Civil Procedure Code (V of 1908), *section* 115—*Jurisdiction under—If could be invoked where an appeal lies.*

It is well settled law that the High Court cannot entertain a revision under section 115, Civil Procedure Code, in cases in which an appeal lies from an order of the lower Court. An order of a Civil Court granting sanction to prosecute or refusing to grant the permission sought for under section 476 of the Code of Civil Procedure is expressly made appealable under section 476-B of the Code. Hence in such cases only a Civil Miscellaneous Appeal could lie to the Court to which the Court making the order is subordinate and a revision cannot be filed directly in the High Court under section 115, Civil Procedure Code, without exhausting the remedy of an appeal to the lower appellate Court.

99 I.C. 957, followed.

O. Radhakrishnan for Appellant.

R.M. *Orders accordingly.*

Somasundaram, J. Raman *v.* Public Prosecutor.
10th December, 1957.
Cr. R.C. No. 141 of 1957 and
Cr. Appeal No. 263 of 1957.

Cattle Trespass Act (I of 1871), *sections* 11 *and* 24—*Applicability to trespass on reserved forest land.*

Criminal trial—Practice—Excusing delay in filing appeal against acquittal—Right of the accused to contest.

Though in terms of the section, section 11 of the Cattle Tresspass Act cannot apply to cases of trespass on Reserved forest land, the provisions of the said section are attracted to such cases by virtue of section 57 of the Madras Forest Act and as such an accused can be convicted under section 24 of the Cattle Trespass Act for allowing cattle to trespass on Reserved forest land.

Normally in criminal cases any delay in filing an appeal cannot be excused without notice to the respondent as be cannot he deprived of the valuable right

which he has acquired by the expiry of the period of limitation. But in cases where the delay is excused without notice to the other side, it is open to the respondent at the time of the final hearing to raise the question of delay and show that there was no justifiable ground to excuse the same.

The mere fact that an appeal against an acquittal was sought to be filed after the expiry of the period of limitation as a result of the attention of the Public Prosecutor being drawn to the matter in Court in a connected proceeding, is no ground by itself to excuse the delay.

G. Gopalaswami and *V. Gopinathan* for Petitioner in Cr.R.C. No. 141 of 1957 and Respondent in Cr. App. 263 of 1957.

The Public Prosecutor (*P. S. Kailasam*) for Respondent in Cr.R.C. 141 of 1957 and Appellant in Cr. Appeal No. 263 of 1957

Rajabathar for Complainant in Cr. R.C. No. 141 of 1957.

R.M. ——— *Both appeal and revision dismissed.*

Somasundaram, J.
12*th December*, 1957.

Public Prosecutor *v.* Anthony
Cr. Appl. No. 393 of 1957.

Opium Act (I of 1878), *section* 14—*Search of a premises after sun set which is prohibited by the section—If affects the legality of the seizure and trial.*

It is no doubt true that section 14 of the Opium Act expressly prohibits search of a premises after sun set and hence any search in contravention of the section will be illegal. But the fact that the search was illegal will not vitiate a conviction for the offence nor can the articles recovered in pursuance of such a search be said to have been not recovered at all. The illegality of the search will only affect the weight to be attached to the evidence, which will be examined very carefully and cautiously by the Court before it is accepted. It cannot vitiate the subsequent proceedings in Court nor can a conviction be set aside solely on that ground.

A.I.R. 1950 All. 436 : A.I.R. 1956 Bom. 528 : A.I.R. 1956 S.C. 411 referred.

The Public Prosecutor (*P. S. Kailasam*) for Appellant.

S. Thirumalai for Respondent.

R.M. ——— *Acquittal set aside.*

Ramaswami, J.
12*th December*, 1957.

Fathima Bi.-*Appellant.*
S.R. No. 34348 of 1957.

Practice—Judgment and decree of lower Court bearing different dates—Appeal against—Maintainability—Procedure to be adopted by the appellant—Civil Procedure Code (V of 1908), *Order* 20, *rule* 7—*Provisions if mandatory.*

The provisions of Order 20, rule 7, Code of Civil Procedure, enjoining that a decree of Court should bear the same date as the judgment, even though it is drawn up and signed at a later date, is mandatory. Hence where the decree and judgment of the lower Court bears different dates, the party seeking to file an appeal against the same has only to apply to the said Court to have the date of the decree brought in conformity with the date of the judgment. An appeal cannot be filed without such rectification.

(Case-law referred)

S. K. Ahmed Meeran and *M. Khaja Mohideen* for Appellant.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J.
16*th December*, 1957.

Ghazani Md. Sahib *v.* Official Receiver.
C.R.P. Nos. 538 and 539 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 3 *and Provincial Insolvency Act (V of* 1920), *section* 55—*Eviction of tenant on the ground of arrears of rent—Original landlord adjudged insolvent—Leased lands vesting in Official Receiver—Payments made* bona fide *to the former landlord—If binding on Official Receiver—Scope of.*

Where a cultivating tenant entered into a registered lease for a period of 5 years with his landlord and paid an advance which was to be adjusted in parts according to the terms and conditions of the contract of lease, on the adjudication of the landlord subsequently as insolvent, the Official Receiver will be equally bound by the terms of the lease. Any adjustment of payment made by the tenant, even though it is after the date of the presentation of the petition for adjudication, will also be binding and valid unless it is shown that the payment or adjustments were made after the tenant had actual knowledge of the insolvency proceedings within the meaning of section 55 of the Provincial Insolvency Act. A constructive knowledge or notice under section 19 of the Act by virtue of a Gazette notification intended for creditors of the insolvent, is not enough to take away the protection afforded under section 55 to *bona fide* payments.

D. Ramaswami Ayyangar and *P. R. Varadarajan* for Petitioner.

K. S. Ramamurthi and *T. R. Mani* for Respondent.

R.M. — *Petition allowed.*

Ramaswami, J.
30th December, 1957.

J.C. Mary, *In re.*
Crl.R.C. No. 872 of 1957
(Crl.R.P. No. 849 of 1957).

Motor Vehicles Act (IV of 1939), *section* 116 *and Madras City Police Act (III of* 1888), *section* 71—*Rash and negligent driving—Liability for penalty and damages—Speed—When dangerous.*

Culpable negligence in the driving of a motor vehicle giving rise to penalties in prosecution and damages in civil suits may be due to negligent driving, rash driving and errors in judgment. Rash or negligent driving will be punishable under section 116 of the Motor Vehicles Act and if the driving is in any public place, under section 71 of the Madras City Police Act also. Mere errors of judgment in driving might give rise to civil liability, but are not punishable criminally.

For an offence under section 116 of the Motor Vehicles Act, the ingredients of speed and manner of driving have to be looked into. 'Speed' to be considered dangerous depends on several factors and varies with the nature of the road, quantum of traffic, actual and anticipated, etc. Though the law does not set a precise limit on the speed with which a motor vehicle can be driven, still speed is dangerous and in a legal sense it is negligence in a great number of cases. Where it is not safe to go at more than a foot pace a driver must go at a foot pace and if even that is unsafe, he must stop. Except in cases of emergencies creating unexpected hazards, a driver is expected to drive an automobile at such a rate of speed as would enable him to stop it in time to avoid a collision discernible ahead.

(Rashness and negligence distinguished—Reasonable foresight explained Culpable negligence to render a person liable criminally—Scope explained—Case-law referred.)

B. T. Sundararajan and *S. V. B. Row* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) on behalf of the State.

R.M. — *Petition dismissed.*

Balakrishna Ayyar, J.
8th January, 1958.

Kunchithapatham *v.*
Ranganadham.
C.R.P. No. 1218 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 2 (*a*)—*Cultivating tenant— Who is.*

A 'cultivating tenant' within the meaning of section 2 (*a*) of the Madras Cultivating Tenants Protection Act, 1955, need not necessarily do physical labour in respect of the cultivation work. Even a person who assumes the risk of the cultivation and directly supervises the work of cultivation such as deciding the cropping time schedule, nature of the crop and manure, quantum of labour to be employed, disposal of the produce, etc., will be a cultivating tenant under the Act.

K. N. Subramanian for Petitioner.

M. Srinivasagopalan for Respondent.

R.M. — *Petition dismissed.*

Rajagopala Ayyangar, J.
25th November, 1957.

Palaniappa Chettiar and Co. *v.*
The Dy. Commercial Tax Officer.
W.P. No. 1279 of 1956, etc.

Madras General Sales Tax Act (IX of 1939, as amended by Amendment Act XVIII of 1955), sections 3 and 5—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, (as amended in 1955), Rules 15 and 16—Scope—If invalid and ultra vires, *as being "law imposing a tax"—Absence of sanction of President—Effect—Constitution of India (1950), Article 286 (3)—Essential Goods (Declaration and Regulation of Tax on Sale or purchase) Act (LII of 1952), section 3—"Law imposing or authorising the imposition of a tax"—Interpretation of—Rules framed under enactment—Machinery for assessment and collection of tax, if law imposing tax—Tests to determine.*

New Rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, which became law on their publication in the Gazette on 7th September, 1955, must be held to be subordinate legislation whose subject-matter is the prescription regarding assessment and collection of taxes "imposed" by sections 3 and 5 of the Madras General Sales Tax Act and, though without their existence, it would not be possible to levy or collect the tax, they are not in themselves "laws imposing the tax" within Article 286 (3) of the Constitution or section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act of 1952—The rules in question are only machinery provisions, but the fact that without the machinery enactment (which are no doubt vital) the taxes may be incapable of being levied or collected would not make them "a law imposing the tax". It is the essential nature of the provisions that has to be considered in deciding whether they are a law "imposing the tax"—their primary or subordinate place in the scheme of the enactment. Rules 15 and 16 cannot therefore be held illegal, inoperative or *ultra vires* on the ground that the sanction of the President has not been obtained as required by Article 286 (3) of the Constitution or section 3 of Act LII of 1952.

Subordinate legislation in the sense of a rule made under an enactment may be a "law" within Article 286 (3) and section 3 of Act LII of 1952. The absence of a specific reference to rules in Articles 286 (3) does not lead to the conclusion that if a Sales Tax Act left the fixation of the rate of levy to a rule, the rule determining the rate would be a "law imposing the tax", which is required to be reserved for the President's sanction before it could be valid or operative under Article 286 (5)—such a rule would be a "law imposing the tax", because the rate of tax is such an essential constituent part of tax legislation that it would be impossible to take them out of the category of a law imposing a tax.

It is not however, every law which has something to do with taxation that can be said to be a law which "imposes" a tax. A distinction has to be drawn between a provision in an enactment which defines the subject-matter of the tax and fixes the rate and one which provides for collection, recovery, exemption, refunds, penalties and other necessary incidents in any scheme of taxation.

12 C.L.R. 321 ; 38 C.L.R. 153 ; 70 C.L.R. 362, applied and followed.

6 S.T.C. 352; 7 S.T.C. 792, distinguished and explained.

3 S.T.C. 392 and 5 S.T.C. 108, referred to

M. K. Nambiyar for *Messrs. Soundararajan and Sivaswami, T. T. Srinivasan* and *A. N. Rangaswami* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Additional Government Pleader (*K. Veeraswami*) for Respondents.

P.R.N.

Petitions dismissed.
Rule nisi discharged.

M—NRC

Ramaswami, J.
29th November, 1957.

Maragathammal *v.* Dharma Goundan.
S.A. No. 726 of 1955.

Transfer of Property Act (*IV of* 1882), *section* 39—*Applicability.*

Under section 39 of the Transfer of Property Act as amended in 1929, a notice of the existence of the right of maintenance of a third party is enough to bind the transferee and it is not further necessary to show that the transferee had knowledge of the intention of the transferor to defeat the maintenance rights.

(1956) 2 An. W.R. 1021, followed.

(1947) 1 M.L.J. 329, Dissented.

T. V. Balakrishnan for Appellant.

T. L. Nagaraja Rao for Respondent.

R.M. *Appeal allowed.*

Balakrishna Ayyar, J.
15th November, 1957.

State of Madras by Collector of Tanjore and others.
S.A. No. 874 of 1957.

Madras General Sales Tax Act (IX of 1939), section 17 (2)—Applicability—Protection under—If applies to reckless acts of officers.

Section 17 (2) of the Madras General Sales Tax Act, 1939, is intended to protect only cases like officers acting under the Act under an erroneous view of the law or where officers proceed on the belief that certain facts exist but later on it turns out that the facts are different. The section cannot be invoked in cases of reckless exercise of authority when there is a total want of *bona fides*.

Where the Collector and the Sales Tax Department illegally attaches the private property of the President of an Association registered under the Societies Registration Act, for recovery of tax due by the society the attachment is illegal and would give rise to a claim for damages.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Appellant.

R.M.

Appeal dismissed.

Rajagopalan, O. C. J. and Rajagopala Ayyangar, J.
13th December, 1957.

Mararji *v.* Nallayya.
R.C. No. 14 of 1956.

Civil Procedure Code (V of 1908), section 113—Reference to High Court—Duty of subordinate Court.

A reference under section 113 of the Code of Civil Procedure by a subordinate Court to the High Court on the question of the validity of an Act or Ordinance could be made only if the Court records its *prima facie* finding that the impugned Act or Ordinance is invalid. Otherwise the reference will be incompetent.

T. K. Subba Rao, for Petitioner.

The Advocate-General (*V. K. Thiruvenkatachari*) and *B. Rathnasabapathi*, for Respondent.

R.M.

Reference discharged.

Panchapakesa Ayyar, J.
20th December, 1957.

Syed Sahib *v.* Angamuthu Mooppan.
C.R.P. No. 1273 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1955 and XIV of 1956), section 6-A—Transfer of pending proceedings before Civil Courts to Revenue Court—Nature of finding of Civil Courts—Procedure.

It is no doubt true that under section 6-A of the Madras Cultivating Tenants Protection Act certain proceedings between landlords and tenants of agricultural land pending before a Civil Court has to be transferred to the Revenue Court after the coming into force of the said Act, if the Civil Court finds that the defendant against whom the proceedings are taken is a cultivating tenant entitled to the benefits of the Act. But this finding by a Civil Court is only a *prima facie* finding and is not final and binding on the Revenue Court.

A suit for an injunction by a landlord against another who claims to be entitled to possession of certain lands in dispute as lessee, when transferred to the Revenue Court under section 6-A of the Act will automatically become a petition by the tenant for restoration to possession of the land and there is no need to file a separate petition for that purpose before the Revenue Court. The legal fiction enacted in section 6-A provides that the Revenue Court shall dispose of the transferred proceedings as though it were an application under Act XIV of 1956. The period of limitation of two months from the coming into force of the Act for filing applications cannot operate in such cases as the date of the filing of the suit will be the date for purposes of the claim before the Revenue Court on transfer.

S. Ramachandra Ayyar and *P. S. Srisailam*, for Petitioner.

A. V. Narayanaswami Ayyar, for Respondent.

R.M.

Petition dismissed.

Ramaswami, J.
30th December, 1957.

Chidambaram *v.* Rathinam.
C.R.P. No. 1739 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*a*) (*i*) *and* (*iii*)—*Landlord requiring building* bona fide *for his own occupation—Building residential and non-residential —Application when could lie.*

Where a building, though let out in parts, constitutes one unit and is essentially a residential building and it is not shown that any particular portion of it was let out specifically for non-residential purposes, the mere fact that a petty shop was being run in a portion of the building will not convert the building or any part of it into non-residential building. Where a landlord requires a building both for his residential and non-residential purposes he can ask for eviction of his tenant in occupation of the respective portions.

D. Ramaswamy Ayyangar and *O. K. Ramalingam*, for Petitioner.

T. V. Balakrishnan, for Respondent.

R.M. ——— *Petitions. dismissed.*

Somasundaram, J.
6th January, 1958.

Gorilan, *In re* :
Cr.R.C. No. 445 of 1957 and
Case Ref. No. 7 of 1957.

Motor Vehicles Act (IV of 1939), *section* 130 (1) *and Penal Code, (XLV of* 1860) *section* 279—*Prosecution for an offence of rash and negligent driving under section* 279, *Penal Code—If could be proceeded under section* 130 (1) *of the Motor Vehicles Act.*

Section 130 (1) of the Motor Vehicles Act provides for a particular manner of disposal of certain prosecutions under the Act (*viz.*) by the accused pleading guilty and remitting the fine indicated in the summons. But this provision cannot apply to prosecutions for rash and negligent driving under section 279, Indian Penal Code. Section 130 (1) of the Motor Vehicles Act can apply only to cases where an offence is committed under that Act and the offence is not one falling under Part A of Schedule V of that Act.

The Public Prosecutor (*P. S. Kailasam*), for the State.

S. V. Rama Ayyangar, for Accused.

R.M. ——— *Order set aside.*

Somasundaram, J.
10th January, 1958.

Jagannathan, *In re.*
Crl.R.C. No. 621 of 1957.
(Crl. R.P. No. 606 of 1957.)

Railways Act (IX of 1890), *section* 121—*Offence under—Refusal of a passenger to show the ticket when demanded—If amounts to impeding a railway servant in the discharge of his duty.*

Railway Mobile Court—Procedure to be adopted by Honorary Magistrates—Examination of accused under section 342, *Criminal Procedure Code (V of* 1898)—*Necessity for.*

The refusal by a passenger alighting from a train to show his ticket when demanded by the railway servant will certainly impede the railway servant in the discharge of his duty and will amount to an offence under section 121 of the Railways Act.

In cases tried by Mobile Railway Courts, the Honorary Magistrates should follow the elementary principle of criminal procedure of questioning the accused also, after the evidence against him is recorded, with regard to the circumstances that appear against him. Otherwise the whole proceedings will be vitiated.

C. K. Venkatanarasimhan and *S. N. Rajan*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Conviction set aside.*

Somasundaram, J.
17th January, 1958.

Govindaswami, *In re* :
Crl.R.C. No. 555 of 1957.
(Crl.R.P. No. 542 of 1957.)

Criminal Procedure Code (*V of* 1898), *section* 537 *as amended by Criminal Procedure Code* (*Amendment*) *Act* (*XXVI of* 1955)—*Misjoinder of charges—Whether vitiates a trial.*

Though under the Code of Criminal Procedure, as it stood before the recent amendment, a misjoinder of charges was an illegality and would vitiate the trial, in view of the recent amendment of section 537 of the Code, an error in a charge including misjoinder does not vitiate the trial unless prejudice is shown.

Petitioner not represented.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Petition dismissed.*

Balakrishna Ayyar, J.
21st January, 1958.

Kuppuswami *v.* Sri Subramaniaswami Devasthanam.
C.R.P. No. 1490 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 6-*A—Transfer of suits by Civil Court to Revenue Court—When could be made—Cultivating tenant entitled to the benefits of the Act—Scope of.*

It is no doubt true that section 6-A of the Madras Cultivating Tenants Protection Act, 1955, as amended by Act XIV of 1956 provides for transfer of certain suits from Civil Courts to the Revenue Courts established under the Act. But having regard to the scheme of the Act and the language of the section before a Civil Court can transfer a proceeding under section 6-A of the Act, it must be satisfied that the tenant is not only a cultivating tenant as defined by the Act; he should also be entitled to some benefit or other under the Act. If both these conditions are not satisfied, no question of any transfer under section 6-A of the Act will arise. It may be that in coming to a conclusion whether a suit has to be transferred or not the Civil Court may have to determine certain questions which are exclusively within the jurisdiction of the Revenue Courts under the Act. But this cannot affect the interpretation of the specific words of the section *viz.*, "cultivating tenants entitled to the benefits of the Act."

Quaere : Since the word 'benefits of the Act' is used in plural, whether it is necessary that the tenant should be entitled to all the benefits of the Act before he could seek a transfer under section 6-A ?

G. R. Jagadisan and *T. S. Srinivasan* for Petitioner.

R. Gopalaswami Ayyangar, R. Pitchai and *K. Natarajan* for Respondent.

R.M. *Order accordingly.*

Somasundaram, J.
21st January, 1958.

Monjee Gopaljee, *In re*.
Crl. R. C. No. 542 of 1957.
(Crl. R. P. No. 529 of 1957).

Madras Cotton Control Order, (1950) *and Ordinance* (*I of* 1955) *and Madras Cotton Control Order*, (1955)—*Carrying on business in raw cotton without license—If an offence during the period when Ordinance was in force.*

Though under the Madras Cotton Control Order, 1950 issued under the Essential Supplies (Temporary Powers) Act, 1946 which expired by efflux of time on 26th January, 1955, trading in raw cotton without licence was a punishable offence, the Central Ordinance I of 1955, either by oversight or otherwise did not include transactions relating to raw cotton among the punishable offences. The subsequent Essential Commodities Act X of 1955 and the Madras Cotton Control Act, 1955 issued under it, no doubt included raw cotton. But this came into force only on 13th July, 1955. Hence no prosecution can be launched for trading in

raw cotton before the coming into force of the Madras Cotton Control Order, 1955 and after the expiry of the order of 1950. Clause 16 of the Ordinance I of 1955 cannot apply to such cases to save any prosecution.

T. R. Ramachandran, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Conviction set aside.*

Somasundaram, J.
22nd January, 1958.

Govindan, *In re.*
Crl. R. C. No. 570 of 1957.
Taken up No. 6 of 1957 and another.

Criminal Law—Practice—Payment of compensation to the accused out of fine imposed on another accused—Legality.

When two accused persons are found guilty for the same offence and one is fined and the other is admonished and released, the Court has no jurisdiction in such cases to order payment of compensation to one of the accused out of the fine imposed on the other accused. The Code of Criminal Procedure does not contemplate giving of compensation by one accused to the other accused.

B. Lakshminarayana Reddy, for first Accused.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Order set aside.*

Panchapakesa Ayyar and
Basheer Ahmed Sayeed, JJ.
27th January, 1958.

Somasundaram *v.* Gopal.
Crl. R. C. No. 680 of 1957.
(Crl. R. P. No. 663 of 1957).

Criminal Procedure Code (V of 1898), section 204 (1-A)—Right of a complainant, in a private complaint, to file additional list of witnesses or vary the original list filed—Procedure.

It is not doubt true that section 203 (1-A) of the Code of Criminal Procedure, as amended recently, provides that no summons or warrant shall be issued against an accused under section 204 (1) until a list of prosecution witnesses has been filed. But it does not prohibit any variation of the list. Of course the list of witnesses required to be filed would be a *bona fide* complete list of witnesses so far known or considered by the complainant as necessary for his case. It cannot be a mere nominal list. But in addition to the list initially filed under section 204 (1-A) a complainant can file supplemental lists of witnesses. It is also equally open to a complainant to give up some of the witnesses included in his original list. But in such cases it is open to the Court to draw any inference against him if the giving up is *mala fide*. Even so the credibility of the evidence of witnesses named in the supplemental list is a matter for the Court to consider and a Court may test the evidence of the supplemental witnesses with greater scrutiny. When the Magistrate is asked to summon fresh witnesses it is open to him, and it is his duty, to apply his mind to it and decide whether the witnesses are necessary. Till he decides to summon the fresh witnesses mentioned, no notice of it need go to the accused.

K. Arunachala Sastri, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*) for the State.

Rangavajjulu Krishnamurthy for Accused 1 and 2.

R.M. *Orders accordingly.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
22nd January, 1958.

Raja Ganga Pratap Singh *v.* The Allahabad Bank, Ltd.
C.A. No. 357 of 1957.

U. P. Zamindar's Debt Reduction Act, 1951, *section* 2 *(f)—Articles* 14 *and* 228 *of the Constitution of India* (1950)—*Civil Procedure Code* (*V of* 1908), *section* 113, *proviso—Scope—Definition of* " *debt* ".

" It seems clear to us that the question raised by appellant comes within the proviso to section 113, Civil Procedure Code as also Article 228 of the Constitution. The Courts below held that in either view of the question of the validity of the impugned portion of the definition of a " debt " appellant would be without the remedy which he sought because that portion of the definition was not severable from the rest and therefore it was not necessary to decide that question to dispose of the case. We are unable to agree with this view. The question of the validity of the definition in so far as it excluded certain debts had to be decided by the Court. The question as to the severability of the impugned part of the definition from the rest would arise only after it had been decided that the impugned part was invalid ".

Mohd. Iqbal, for Appellant.

Vidya Sagar, for Respondent.

G.R.

Appeal allowed and remanded.

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das and A. K. Sarkar, JJ.
4th February, 1958.

Workmen of Dimakuchi Tea Estate *v.* Dimakuchi Tea Estate.
C.A. No. 297 of 1956.

Industrial Disputes Act (*XIV of* 1947), *section* 2(k)—" *Industrial dispute* "—*Test.*

The majority judgment prescribed two tests to determine whether a dispute pertaining to a person who is not a workman is an " industrial dispute " within the meaning of section 2(*k*) of the Industrial Disputes Act, 1947. They are : (1) the dispute must be a real dispute between the parties to the dispute so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other ; and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

Mr. Justice Sarkar in his dissenting judgment held that a dispute concerning a person who was not a workman could be an industrial dispute within the meaning of section 2 (*k*). " I would not make interest of the workmen in the dispute a condition of the existence of an industrial dispute. The Act does not do so. It would be impossible to define such interest and such a condition would defeat the object of the Act."

" It is not for the Court to lay down rigid principles of interest which interfere with the Government's discretion for that might defeat the object of the Act. It is not necessary to say that a dispute is an industrial dispute only when the workmen are interested in it. Such a test would make it justiciable by Courts and also introduce a rigidity in the application of the Act which is incompatible with the fast changing concepts it has in view and so defeat the object of the Act ".

C. B. Aggarwala, for Appellant.

Purshotamdas Tricumdas, for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and P. B. Gajendragadkar, JJ.
7th February, 1958.

Talab Haji Husain *v.* M. P. Mondkar and another.
Cr. A. No. 16 of 1958.

Criminal Procedure Code (*V of* 1898), *sections* 561-A *and* 496—*Scope—Inherent powers of the High Court—Limits.*

"The inherent power conferred on High Courts under section 561-A has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself."

"After all, procedure, whether criminal or civil, must serve the higher purpose of justice; and it is only when the ends of justice are put in jeopardy by the conduct of accused that the inherent power can and should be exercised in cases like the present".

"A close examination of provisions of section 496 would show that there is no conflict between its provision and the exercise of the jurisdiction under section 561-A. If the power under section 561-A is exercised by the High Court, the bail offered by accused and accepted by the trial Court would be cancelled and accused would be ordered to be arrested forthwith and committed to custody. Where a person is committed to custody under such an order, it would not be open to him to fall back upon his rights under section 496, for section 496 would in such circumstances be inapplicable to his case. We do not read section 496 as conferring on a person accused of a bailable offence an unqualified, absolute and an indefeasible right to be released on bail".

Purshotamdas Tricumdas, for Appellant.

K. J. Khandalwala, for Respondents.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, Syed Jafer Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
7th February, 1958.

Nagendranath Bora, etc. *v.* Commr. of Hills Division and Appeals, etc.
C.A. Nos. 668, 669, 670 and 672 of 1957.

Eastern Bengal and Assam Excise Act (1910), *section* 9—*Orders of Appellate authority—Whether administrative or judicial—Constitution of India* (1950), *Articles* 226 *and* 227 —*Jurisdiction of High Court under—Limits.*

An order of the appellate authority under Eastern Bengal and Assam Excise Act was subject to the controlling authority of the High Court as the authority did not pass merely administrative orders but had to function in a judicial or quasi-judicial manner.

The Act had created its own hierarchy of officers and appellate authorities to administer the law. So long as those authorities functioned within the letter and spirit of the law, the High Court had no concern with the manner in which those powers had been exercised. In the present cases the High Court appeared to have gone beyond the limit of its powers under Articles 226 and 227 of the Constitution.

1955 S.C.J. 345, applied.

C. K. Daphtary, Solicitor-General for Appellant in C. A. No. 672 of 1957.

S. M. Lahiri Advocate-General (Assam), *A. V. Viswanatha Sastri* and *D. Chaudhari* and *N. Lal*, for Appellants in C. A. No. 670 of 1957.

S. M. Lahiri, Advocate-General (Assam), *C. K. Daphtary* Solicitor-General, *R. Chowdhary*, *Ganpat Rai*, *J. B. Dadachanji* and *N. Lal*, for Respondents in C. A. Nos. 669 and 672 of 1957.

G.R. —— *Appeals allowed.*

Subrahmanyam, J.
3rd December, 1957.

Vengali Ramunni Menon *v.*
The Joint Official Liquidators of
Premier Hosiery Works, Ltd.
Appl. No. 2269 of 1956.
(O.P. No. 26 of 1955).

Company—Broker employed to procure business—Agreement to pay commission at agreed rate and income-tax on commission earned by him—Legality—Liability of company or liquidator in winding up to pay such tax—Companies Act (I of 1956), *section* 200*—Advance paid to broker at commencement of agreement—Right to demand repayment—When arises—Limitation —Limitation Act (IX of* 1908), *Article* 89*—Failure to claim deduction in suit by broker for commission—If bar to claim for deduction at final settlement.*

There is nothing illegal or irregular in an agreement entered into by a company with a broker employed by the company to procure business to the effect that the broker would be paid commission at an agreed rate and would be paid, in addition income-tax on the commission earned. The company would be liable to pay income-tax on the commission earned by the broker, and when the company goes into liquidation and is wound up, the liquidators are bound to pay such tax.

Where a company pays an advance to the broker employed by it to procure business, the company would be entitled to deduct the advance so paid, out of the commission earned by and due to the broker at the time of the final settlement of accounts between the company and the broker. No question of limitation for a suit to recover the advance paid by the company can arise so long as the accounts are not settled.

The fact that the company in a suit by the broker for recovery of his commission for a certain period does not claim to deduct the advance from the brokerage claimed in that suit would not affect either the nature of the company's right in relation to the advance or its right to deduct the advance at the time of the final settlement of accounts. The omission to so claim a deduction would not therefore operate as a bar to the deduction of the advance out of the commission due to the broker at the time of the final settlement of accounts.

P. S. Parameswara Ayyar, for Applicant.

A. K. Sreeraman, one of the joint Official Liquidators in person.

P.R.N.

Application dismissed.
Order of liquidators modified.

P. Rajagopalan, Offg. C.J., and
Ganapatia Pillai, J.
15th January, 1958.

C. V. Naidu *v.*
A. V. Jagadisa Nadar.
O.S. Appeal No. 49 of 1953.

Civil Procedure Code (V of 1908), *section* 11—"*Heard and finally decided*"*—Issue or matter arising in pleadings of defendant not adjudicated upon—Court considering some pleas raised by defendant unnecessary for deciding suit in favour of plaintiff—Decision in suit—If* res judicata *in subsequent suit on same questions raised therein—Adverse decision on pleas—If implied by reason of decree in plaintiff's favour—Transfer of Property Act (IV of* 1882), *section* 41*—Applicability—Estoppel by representation and conduct.*

Though in the case of an issue or a matter directly and substantially in issue based upon any specific plea in the pleadings and issues raised in a prior suit, a decision by the Court would operate as *res judicata* in a subsequent suit, where the Court holds that it is not necessary to consider the pleas raised in the pleadings for deciding the claim of the plaintiff, it cannot be said that those issues or matters were

heard and finally decided. It cannot be held that because the Court has given a decision favourable to the plaintiff, the pleas raised by the defendant must be deemed to have been heard and determined. Where it is clear that the Court did not intend to decide, and, in fact, did not decide, certain issues arising in the pleadings and did not apply its judicial mind to the questions at issue in the prior suit covered by such issues and no evidence was taken thereon at all, it must be held that the Court did not decide those issues—did not hear and determine them—and therefore the decision in the prior suit would not operate as *res judicata* so as to preclude an investigation and determination, in a subsequent suit of the questions covered by those issues. Those questions would be still at issue in the later suit.

Case law referred to.

A purchased a property in the joint names of *K*, his wife, and *J*, his son by a concubine on 17th May, 1924. *K* died on 22nd July, 1924 and thereafter *J* filed a suit for a declaration of his title to the property and for possession both in his own right and as the heir and legal representative of *K* (deceased) against the tenant in possession and the vendors of the property, obtained a decree, executed the same and obtained possession on 22nd December, 1924. He thereafter dealt with the property as his own. *A* was alive all this time and died only on 27th October, 1927. *K* was also living with *A* in the family house. *J* was all along treated as the son of *K* and was also described as such in the sale deed taken in the joint names of himself and *K*. The property, after he took possession through Court, remained entered in his name in the registers of the Corporation ever since and the Collector's certificate was also issued in his name.

Held—(1) that it was impossible to believe that the suit was filed by *J*, without the knowledge and active support of *A*, his putative father, and it must be held that *A* held out that *J* was the sole owner of the property and entitled to take possession of it.

(2) that section 41, Transfer of Property Act, applied to the case, and *A*, during his lifetime, would be precluded by the bar of estoppel from putting forward his title, and, therefore, a person claiming under him, such as a legatee under his will, would be equally subject to the bar of estoppel.

The Advocate-General (*V. K. Thiruvenkatachari*), *K. Veeraswami* and *I. Chakrapani*, for Appellant.

C. R. Rajagopalachari, *R. Tirumalaiswami Naidu* and *B. T. Sampath*, for Respondents.

P.R.N. *Appeal allowed.*

Rajagopalan, O.C.J., and Govindaswami *v.*
Rajagopala Ayyangar, J. Ramaswami.
9th December, 1957. L.P.A. Nos. 48 and 49 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938) *and Amending Act* (*XXIII of* 1948), *section* 19 (2)—*If applicable to decrees passed after the commencement of the original Act of* 1938—'*After the commencement of this Act*'—*Meaning of.*

The expression 'after the commencement of this Act' in sub-section (2) of section 19 of the Madras Agriculturists Relief Act, 1938, which was introduced by the Amending Act XXIII of 1948, refers only to the original Act of 1938 and not to the Amending Act of 1948. Hence the benefit of scaling down of decrees under section 19 of the Act are not still applicable to decrees passed after the date of the original Act and if in such cases the judgment-debtor has failed to claim the benefit of the Act before the passing of the decree he cannot have the decree amended later by resort to section 19 of the Act.

T. R. Srinivasa Ayyar and *T. K. Subramania Pillai*, for Appellant.

T. R. Srinivasan, for Respondent.

R.M. *Appeals dismissed.*

Rajagopalan, O.C.J., and Muthuswami Gurukkal *v.*
Basheer Ahmed Sayeed, J. Ayyaswami Thevan.
17th December, 1957. L.P.A. Nos. 155 and 162 of 1957.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62 (1) *and Code of Civil Procedure* (*V of* 1908), *Order* 39, *rules* 1 *and* 2—*Jurisdiction of Civil Court to grant injunction in appropriate cases*—*If ousted in suits under sectinn* 62 (1) *of Madras Act* (*XIX of* 1951).

In suits instituted under section 62(1) of the Madras Hindu Religious and Charitable Endowments Act, it is not as if the civil Court has no jurisdiction at all to grant any interim relief. What the section prohibits is only the stay of the order of the Commissioner. If the ordinary jurisdiction of the civil Courts are to be ousted by any special statute it must be by express words or necessary intendment of the statutory provision. The ban imposed by section 62(1) of the Madras Hindu Religious and Charitable Endowments Act can be applied only to the extent warranted by the language of that statutory provision. The rest of the jurisdiction of the civil Court, *e.g.*, those regulated by rules 1 and 2 of Order 39, Civil Procedure Code, remain intact.

In a suit to set aside the order of the Commissioner and declare the plaintiff as hereditary trustee the Court can on the plaintiff's application grant an interim injunction restraining the newly appointed trustees from interfering with the plaintiff's possession of the temple lands. Such an injunction will not amount to stay of the operation of the order of the Commissioner within the meaning of section 62 (1) of the Madras Hindu Religious and Charitable Endowments Act. Whether or not an injunction should be granted is a matter for the Court to decide on the facts of each case applying the normal rules of law.

(1952) 2 M.L.J. 441, doubted.

V. J. Ramaswamy Ayyangar, for Appellant.

S. Mohan Kumaramangalam, *K. V. Sankaran* and *S. Sethuratnam*, for Respondent.

R.M. *Appeals allowed.*

Rajagopalan, O.C.J., and Sundararamanjulu *v.*
Basheer Ahmed Sayeed, J. Kamalammal.
17th December, 1957. O.S.A. No. 123 of 1953.

Deed —*Construction*—*Gift of property equally in favour of two or more persons with a gift over to the descendants of one of them*—*Gift over*—*When will take effect*—*Death of one of the beneficiaries*—*Rights of the surviving beneficiaries*—*Theory of cross-remainder.*

Where there is a gift equally between two or more persons during their respective lives and after their death the whole property is given over to the descendants

of one of them the Court will presume that the testator's intention was that after the death of one of the original beneficiaries the survivor or survivors will be entitled to the whole of the income during their lifetime down to the period of distribution Th egift over to the descendants of one of the beneficiaries will come into operation only after the death of all the original beneficiaries the principle of construction being that the original beneficiaries took the property as tenants-in-common for life with a like-life interest in remainder to the survivor or survivors on the death of one of them. The Court would imply in such cases a cross-remainder for life between the beneficiaries.

L.R. (1912) 1 Ch. D. 626; L.R. (1916) 2 Ch. D. 50; (1945) 2 M.L.J. 393 (P.C.) and A.I.R. 1922 Pat. 68, referred.

N. K. Mohanrangam Pillai and *N. K. Pattabhiraman*, for Appellant.

K. Tiruvenkatachari and *V. Naghabushanam*, for Respondent.

R.M. *Appeal allowed.*

Rajagopala Ayyangar, J.
18*th December*, 1957.

Annamalai Ayee Chatram *v.* Ramabadhra Vandayor.
W.P. No. 39 of 1957 and C.R.P. No. 45 of 1957.

Tanjore Tenants and Pannayal Protection Act (XIV of 1952), *section* 13 (1) *and* (2) *and Madras Cultivating Tenants Protection Act (XXV of* 1955), *Amendment Act (XIV of* 1956), *sections* 10 *and* 11—*Effect of later Act on proceedings under earlier Act.*

The territorial extent of the Tanjore Tenants and Pannayal Protection Act, 1952, was primarily restricted to the District of Tanjore and the operation of the Madras Cultivating Tenants Protection Act,1955, as originally enacted,was confined to areas outside the area to which the Tanjore Act applied and has left the Tanjore Act wholly unaffected. But by the Amending Act (XIV of 1956) the territorial operation of the Cultivating Tenants Protection Act, 1955 was extended to the whole of the State, including the area governed by the Tanjore Act. Section 10 of the Amending Act of 1956 clearly provides for the inter-relation between the provisions of the two enactments. Since the provision of the section 13 (2) of the Tanjore Act are not overridden by any contrary provision in the Cultivating Tenants Protection Act the provisions of sections 10 and 11 of the Amending Act of 1956 relating to transfer of proceedings cannot apply to cases under section 13 (2) of the Tanjore Act as there is no provision in the Act of 1955 corresponding to section 13 (2) of the Act of 1952. The appellate jurisdiction of the Revenue Court under section 13 (2) of the Tanjore Act is not therefore in any way affected by the Madras Act XXV of 1955 as amended by Act XIV of 1956. Similarly a vested right of appeal under section 13 (2) of the Tanjore Act to the Revenue Court from a decision of the Conciliation Office, is a vested right which cannot be taken away by the mere fact that section 11 (2) of the Madras Cultivating Tenants Protection (Amendment) Act (XIV of 1956) superseded the powers of the Conciliation Officer under section 13(1) of the Tanjore Act. If at the commencement of the Amending Act any proceedings under section 13 (1) of the Tanjore Act were pending they would be disposed of by the Revenue Divisional Officer under the later Act. But where no such proceedings were pending but were disposed of before the new Act, the right of appeal under the original Act cannot be taken away, though the claim as to restoration to possession by a cultivating tenant under section 13 (1) of the Tanjore Act is also covered by section 4 of the Cultivating Tenants Act.

T. R. Srinivasan, D. Ramaswami Ayyangar and *O. K. Ramalingam*, for Petitioners.

The Additional Government Pleader (*K. Veeraswami*), *T. S. Kuppuswami Ayyar* and *K S. Naidu*, for Respondent.

R.M. *Petition allowed.*

Rajagopala Ayyangar, J.
18th December, 1957.

Durairajan *v.* Sivagnanam.
W.P. No. 920 of 1957.

Madras Cinemas (*Regulation*) *Act* (*IX of* 1955) *and Rules—Sections* 3 *and* 5 *and Rule* 35—*Scope of—Licensing of site and licensing of exhibition of film—If entirely independent of each other—Report of the local authority on suitability of site received after one month's time fixed under th , rule—Effect.*

Sections 3 and 5 of the Madras Cinemas (Regulation) Act, 1955, reflect the correlation between the licensing of a place where any exhibition of a film is to be given and the licensing of the exhibition of the film itself. The licensing of the place is merely a step in the grant of a license to conduct a cinema show. The two licenses, *viz.*, one for the place and the other for the exhibition of the film, are not independent in the sense that one should be viewed without its relationship to the other. If as between two rival applicants for a licence to run a cinema exhibition if one has a right to be preferred under section 5 of the Act by virtue of his previous experience the rules do not enjoin the grant of a certificate in regard to the place chosen by the other.

It is true that under rule 35 of the Madras Cinemas (Regulation) Rules, the local authority concerned has to submit its view and recommendation to the licensing authority about the suitability of the site, within one month. Though a report, if sent after the expiry of the period aforementioned could not be taken into account as such by the licensing authority still the facts stated by the local authority as regards the suitability or otherwise of the site, can be taken into account as matters relevant for the grant of a licence for exhibition. If the report is received by the licensing authority before actual orders are passed by it there is nothing wrong or illegal in their looking into it and considering the grounds stated therein as regards the suitability of the site.

T. R. Srinivasan and *A C. Munuswami Reddi*, for Petitioner.

The Additional Government Pleader (*K. Veeraswamy*), *R. M. Seshadri* and *S. Bhaskaran*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J.
18th December, 1957.

Arumugha Gounder *v.* Natchimuthu Pillai.
S.A. No. 615 of 1955.

Hindu Succession Act (*XXX of* 1956), *section* 14—*Applicability and scope—Possessed of the property—Meaning of—Limited owner mortgaging property prior to Act—If entitled to the benefit of the Act.*

It is now well settled that section 14 of the Hindu Succession Act, 1956, is retrospective and it enlarges the limited estate of the Hindu women into absolute estate in cases where they are possessed of the property when the Act came into force. The word possession is used in a broad sense and contemplated any kind of possession recognised by law and not necessarily a physical possession, the object being to benefit Hindu females converting their limited interest into an absolute one. The Act is not intended however to benefit alienees who have purchased properties before the coming into force of the Act from such limited estate owners. In such cases the limited owner could not be said to be possessed of the property on the date of the coming into force of the Act and as such the benefit of section 14 cannot be attracted.

Where a limited owner has mortgaged her property before the Act the right of redemption being subsisting in her on the date of the coming into force of the Act, she will be entitled to the benefit of section 14.

T. R. Srinivasan and *A. C. Munuswami Reddi*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. M. Seshadri* and *S. Bhaskaran*, for Respondent.

R.M. ——— *Appeal allowed.*

Balakrishna Ayyar, J.
7th January, 1958.

Kandaswami Mudaliar *v.*
Panchayat Board, Tallakulam.
W.P. No. 524 of 1957.

Madras Village Panchayats Act (*X of* 1950), *sections* 24, 29, 31, 33 *and* 34—*Powers of the President of a Panchayat—President if could cancel a resolution of the Panchayat.*

Under the provisions of the Madras Village Panchayats Act, 1950, the President of a Panchayat has no power to cancel a resolution of the Panchayat Board, of which he is only the administrative head.

T. Chengalvarayan, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Rule absolute.*

Somasundaram, J.
8th January, 1958.

Marudhayee *v.*
Malla Govindan.
Crl. Appeal. No. 505 of 1957.

Criminal Procedure Code (*V of* 1898), *section* 247—*Procedure under—Acquittal of an accused on the ground of absence of the complainant—Duty of Magistrate to exercise discretion.*

It is no doubt true that under section 247 of the Code of Criminal Procedure a Magistrate is empowered to acquit an accused on the ground of the non-appearance of the complainant on the hearing date. But before doing so the Magistrate should exercise the discretion vested in him by the same section to adjourn the case to some other date or to dispose of the case on merits where he considers the personal appearance of the complainant unnecessary. The power of acquittal under the section is not to be exercised mechanically but after the exercise of proper discretion in relation to the other provisions of the section.

P. Sharuddin, M. R. Krishnan, and *S. M. Amjad Nainar*, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for the State.

P. A. Krishnan Kutty Nair, for Accused 1 and 2.

R.M. ——— *Appeal dismissed with observations.*

Rajagopalan, O.C.J., and
Ganapatia Pillai, J.
15th January, 1958.

Kuriakose *v.*
Kuriakose.
O.S.A. No. 39 of 1957.

Divorce Act (*IV of* 1869), *section* 36—*Alimony* pendente lite—*Quantum of—Net average income—What is—Cost of the suit—Provision for—Circumstances to be taken into consideration.*

In suits for divorce possession of independent means by the wife would no doubt be a relevant factor in deciding whether any provision should be made in her favour by way of alimony *pendente lite* or towards her costs of defending the suit. The mere fact that the wife is in possession of certain jewellery which cannot be said to be in excess of what a lady of her status in life could be expected to possess for her personal use, or that she is in possession of certain household utensils or furniture none of which she could be expected to sell for her maintenance or to finance the litigation, is no ground to disallow the claim. In deciding the quantum of alimony *pendente lite* the Court should take into consideration the net average income of the husband, which in cases of salaried persons would mean the salary, less what he has to pay by way of income-tax, contributions towards Provident Fund, etc.

G. Vasantha Pai and *D. Padmanaba Pai*, for Appellant.

E. Antony Lobo, for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopalan, O.C.J., and Ganapatia Pillai, C.J.
20th January, 1958.

Shanmugha Udayar *v.* Sarangapani Goundar.
A.A.O. No. 285 of 1957.

Representation of the People Act (*XLIII of* 1951), *section* 7 (d)—*Object of—Interest in a contract—What amounts to—Gift or loan of money to a contractor—If would amount to an interest in the contract.*

The word ' interest ' in section 7(*d*) of the Representation of People Act, 1951, should be given its normal meaning, *viz.*, a pecuniary or material interest. It is not every sentimental interest that would attract the disqualification under the section. The object of the section is to prevent the conflict between interest and duty that might inevitably arise if a person seeking an elected office is interested in a contract with the appropriate Government. Hence the interest in any contract as contemplated by the section is a substantial material or commercial interest. The mere fact that a candidate gave a gift to a relation of his, who happens to be a contractor under the appropriate Government would not amount to proof of the candidate having an interest in the contract itself. Cases of loan to a contractor might stand on a different footing as there is an obvious expectation of a repayment.

Hutton v. *Wilson*, (1889) L.R. 22 Q.B.D. 744; *Hunnings* v. *Williamson*, L.R. 11 Q.B.D. 533 and *Lapiah* v. *Braithwaite*, L.R. (1925) 1 K.B.D. 474, referred.

T. Venkatadri, P. R. Gokulakrishnan and *G. K. Raman*, for Appellants.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Respondent.

R.M. *Appeal dismissed.*

Balakrishna Ayyar, J.
20th January, 1958.

Thiruvengadaswami *v.* Commissioner, Hindu Religious and Charitable Endowments, Madras.
C.R.P. No. 1448 of 1957.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62 (1) (ii)—*Right of suit within* 90 *days to set aside an order—Period how computed—Order—Meaning of.*

The word ' order ' in section 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, means as in any other case of judicial order, the whole of the order passed and not merely the last sentence of it. Where the Commissioner under the Act passed an order merely stating 'the appeal be and is hereby dismissed' and calls the reasons for the order as annexure, the annexure is an integral part of the order. The date of receipt of the order contemplated by section 62 (1) (ii) of the Act is therefore the date of receipt of the entire order including the so-called annexure and not merely the last sentence of the order. The aggrieved party has a right to file the suit within 90 days of his obtaining a copy of the entire order if the same is not communicated to him. Where however a suit has been filed on receipt of the formal order alone to avoid objections as to limitation, it will be open to the plaintiff to amend the plaint after receiving the reasons for the order—the so-called annexure. The fact that there is no provision in the rules under the Act to furnish free copy of the order or to exclude the time taken to obtain a copy of the order, makes no difference as the ' order ' contemplated by the provision is to be the whole order of which the formal portion and the annexure form an integral part.

V. N. Venkata Varadachari, for Petitioner.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. *Petition allowed.*

Balakrishna Ayyar, J.
21st January, 1958.

Premchand Motichand *v.*
Hameed Sultan.
C.R.P. No. 1746 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*a*) *and* (*c*)—*Difference between—Landlord requiring additional accommodation—Building residential —If could ask additional accommodation for non-residential purpose.*

It is no doubt true that under section 7(3) (*a*) of the Madras Buildings (Lease and Rent Control) Act, 1949, a landlord cannot obtain eviction of his tenant from a residential building unless he wants the same for his own residence and in case of a non-residential building unless he wants it for purposes of his business. But sub-clause (*c*) of section 7 (3) does not appear to contain any such limitation. Under sub-clause (*c*) if a landlord could satisfy the Controller that he wants additional accommodation in the same building a portion of which is already under his occupation, it is open to him to readjust the additional accommodation in the manner convenient to him and it cannot be insisted that the additional accommodation sought for should be used by the landlord for the same purpose for which the tenant sought to be evicted was using it.

Kesavalal Tarwady, for Petitioner.

M. S. Venkatarama Ayyar and *V. Krishnan,* for Respondent.

R.M. ——— *Petition dismissed.*

Somasundaram, J.
22nd January, 1958.

Swami Aiya, *In re.*
Crl. Rev.C. No. 551 of 1957.
Crl. Rev. P. No. 538 of 1957.

Penal Code (*XLV of* 1860), *sections* 99 *and* 353 *and Code of Criminal Procedure* (*V of* 1898), *sections* 42, 54, 56 *and* 75 *to* 87—*Sub-Inspector of Police given warrant to arrest the accused—Constable following the Sub-Inspector arresting the accused—Use of force by the accused against the Constable—If no offence—Every person in section* 42, *Criminal Procedure Code —If includes the Police Officers accompanying the authorised officer—Sections* 54 *and* 56—*Combined effect of—If affected by sections* 75 *to* 87.

The expression 'every person' in section 42, Code of Criminal Procedure, is not confined to only persons other than the police officers but it includes all persons, including police officers who accompany a sub-Inspector of police for purposes of arresting an accused. The fact that under the warrant issued only the sub-Inspector is authorised to arrest does not mean that the other police officers who accompanied him are acting illegally if they assist the sub-Inspector in preventing the escape of the accused within the scope of section 42 of the Criminal Procedure Code. Such officers will come within the scope of section 99, Indian Penal Code and there could be no right of private defence against them.

A combined reading of sections 42 and 54 of the Code negatives any right of private defence against an officer either aiding another officer under section 42 or acting by himself under section 54 of the Code and the provisions of section 56 of the Code do not in any way limit the operation of section 56.

It is no doubt true that sections 75 to 86 of the Code of Criminal Procedure lay down certain procedure to be followed when the Court issues a warrant for the arrest of a particular person. But these provisions do not affect the action taken by officers under section 42 and section 54 of the Code.

(1948) 1 M.L.J. 377, doubted and explained. I.L.R. 40 Mad. 1028, foll.
Case law referred.

S. Mohan Kumaramangalam and *K. V. Sankaran,* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

S.R. Das, C.J., T.L. Venkatarama Aiyar
S.K. Das, A.K. Sarkar and Bose, JJ.
14th February, 1958.

State of U.P. *v.*
Tobit and others.
Cr.A. No. 128 of 1955.

Criminal Procedure Code (*V of* 1898), *section* 419—*Limitation period—Filing of certified copies.*

Having regard to the purpose and context of section 419 of the Criminal Procedure Code it is necessary to file a certified copy of the Judgment of the Court appealed from along with the memorandum of appeal. The filing of an uncertified copy could not be considered compliance with the requirements of that section.

G. C. Mathur, for Appellant.

S. Andley, for Respondent.

G.R. — *Appeal dismissed.*

Rajagopala Ayyangar, J.
16th December, 1957.

Chidambaram *v.* Muthukumaraswami.
W.P. No. 973 of 1956.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *sections* 39 *and* 42—*Effect of on schemes framed earlier—Qualification of trustees under earlier scheme—If could be overlooked—Misconduct of one of the members of the family of hereditary trustees—If abrogates the rights of other members to become hereditary trustee.*

It is true that sections 39 and 42 of the Madras Hindu Religious and Charitable Endowments Act, 1951, abrogate certain provisions of the schemes already framed in regard to institutions within the Act and give a discretion to the Commissioner to appoint trustees to such institutions. If any particular scheme contained provisions which are found later to work to the detriment of the institution the proper modeof removing thehardship would be, not by ignoring the provisions of the scheme but by having the scheme amended by appropriate proceedings in that behalf. Where a scheme provides for a specific number of trustees to be appointed and their qualifications, the number might be varied by the Commissioner but the qualifications cannot be overlooked.

Where a member of a family from which a trustee is to be appointed under a scheme is found to be guilty of misconduct prejudicial to the interests of the insti-titution his claim to trusteeship might be overlooked. But on that score the claim of the other members of the family cannot be rejected.

T. M. Chinnayya Pillai, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*) *V. Srinivasan* and *D. V. Sivagnanam*, for Respondent.

R.M. — *Scope of the Rules discussed.*

Rajagopalan, O.C.J., and
Basheer Ahmed Sayeed, J.
17th December, 1957.

Narayana Ayyar *v.* Veerankutti.
C.R.P. No. 77 of 1956.

Court-fees Act (*VII of* 1870), *section* 6 *and Madras City Civil Court Act* (*VII of* 1892) *section* 16 (3) *and Madras City Civil Court Amendment Act* (*X of* 1955), *section* 8—*Transfer of suits from the Original Side of the High Court to the City Civil Court by virtue of the enhanced jurisdiction of the City Civil Court—If liable to levy of additional Court-fees in the City Civil Court, if there is any difference in the rates of Court-fees in the two Courts.*

Section 8 of the Madras City Civil Court Amendment Act (X of 1955) provides for transfer of all pending suits on the Original Side of the High Court to the City Civil Court, if they are cognisable by the said Court by virtue of the enhancement of its jurisdiction. Such transfers are effected automatically by the statute and the transfer is not one by the High Court under its powers under section 16 of the Madras City Civil Courts Act, 1892. The proviso to section 16 (3) of the said Act clearly provides for recovery of additional Court-fee where a suit is transferred by the High Court to the City Civil Court under that section. But this provision has no application to the statutory transfer effected by the recent Amending Act X of 1955. Section 6 of the former Court-Fees Act, 1870, cannot also apply to such cases as the word 'received' in that section cannot have a wide meaning as to include cases transferred automatically by Statute from one Court to another without the intervention of the parties. Hence neither under section 16 of the Madras City Civil Courts Act, 1892, nor under section 6 of the Court-fees Act, 1870, can additional Court-fees be levied on plaints v lidly instituted in the Original Side of the High Court when they are transferred to the City Civil Court by virtue of the Amending Act X of 1955.

G. N. Chari, R. Srinivasan, B. V. Viswanatha Ayyar, Alladi Subramaniam and *Alladi Kuppuswami*, for Petitioners.

The Additional Government Pleader (*K. Veeraswami*) for Respondent.

R.M. *Petition allowed.*

Balakrishna Ayyar, J.
8th January, 1958.

Viswanatham Chettiar *v.*

C.R.P. Nos. 1437 to 1440 of 1957.

Madras Cultivating Tenants (Payment of Fair Rent), Act (XXIV of 1956), *section* 7 *—Applicability —Scope of Act—Difficulties in administration.*

The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 is hard to understand in some respects since certain ideas have been incorporated into it without providing any consequential remedy. To some extent it is true that section 7 of the Act could be invoked only after the fair rent is fixed under the Act. But there is no provision for any remedy to the landlord till the fixation of fair rent and no penalty is attached to the removal by a tenant of the crop without a division contrary to the provisions of section 7 of the Act.

To avoid such hardships the best way of interpreting the Act will be to hold that prior agreements entered into between landlords and tenants will be valid and enforceable except those portions of the agreement which are repugnant to the provisions of the Act.

Till a fair rent is fixed the Court can proceed on the basis that the contract entered into by the parties voluntarily is a fair and reasonable one and that a given crop year is a normal one unless exceptional circumstances are proved. On this basis the landlord should be paid his due share as per the contract as modified or superseded by the Act, till a fair rent is fixed.

G. R. Jagadisan and *T. S. Srinivasan*, for Petitioner

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. *Petition allowed.*

Somasundaram, J.
8th January, 1958.

Subramanyam and others.
Crl. Rev. Case No. 393 of 1957.
Crl. Rev. Pet. No. 387 of 1957.

Criminal Procedure Code (*V of* 1898), *sections* 1 (2) *and* 403 (4) *and Madras Village Courts Act* (*I of* 1889) *and the rules framed thereunder—Rule* 31—*Summary dismissal of a complaint by the village Court for failure of complainant to appear on the day fixed for hearing—If amounts to acquittal of the accused—Fresh charge-sheet filed subsequently before the regular Court in respect of the same matters under different provisions of the Penal Code* (*XLV of* 1860)—*If barred—Practice—Principle of.*

The procedure applicable to village Courts under the Village Courts Act for trial of offences is expressly saved by section 1 (2) of the Code of Criminal Procedure and as such a mere dismissal of a complaint by a village Court u der rule 31 of the rules framed under the Village Courts Act for failure of the complainant to appear cannot amount to an acquittal within the meaning of the Code of Criminal Procedure so as to bar a fresh prosecution before the regular Courts under the Code in respect of the same matter. It may be true in certain cases that where a Court of inferior jurisdiction acquits an accused of a charge of a minor offence, *e.g.*, hurt to a public servant, then, when a prosecution is laid before a Court of superior jurisdiction for a more serious offence in respect of the same incident, the superior Court is bound by the finding of the inferior Court if the evidence relating to the minor offence is also included in the serious offence. But this does not mean that the dismissal of a complaint by a Court which had no jurisdiction to hear the complaint even if the dismissal might tantamount to an acquittal under the rules of procedure of that Court, will bar a fresh prosecution before a regular Court for certain other offences arising out of the same incident.

A.I.R. 1956 S.C. 415, explained.

To such cases section 403 (4) of the Code of Criminal Procedure will apply and a fresh prosecution for a different offence is respect of the same incident will not be barred.

G. Gopalaswami and *V. Gopinathan*, for Petitioners.

The Advocate-General (*V. K. Tiruvenkatachari*), and The Public Prosecutor (*P. S. Kailasam*) for State.

V. Srinivasan, for Complainant.

R.M.

Petition dismissed.

Balakrishna Ayyar, J.
20th January, 1958.

Ravamanickkammal *v.*
Ammani Ammal.
C.R.P. No. 1521 of 1957.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (4) (*b*)—*Order of Revenue Divisional Officer directing the tenant to tender the arrears of rent to landlord—Legality—When can be questioned.*

It is no doubt true that under section 3 (4) (*b*) of the Madras Cultivating Tenants Protection Act a Revenue Divisional Officer can only direct the tenant to deposit the arrears of rent in Court. He has no jurisdiction under the Statute to direct the tenant to pay or tender the rent to the landlord. But where such an order has been made and the tenant did not raise any objection to it, it is not open to him to question later the validity of that order in revision proceedings arising out of the eviction order passed against him due to his failure to tender the rent as directed.

S. Mohan Kumaramangalam, K. V. Sankaram and *S. Palaniswami*, for Petitioners.

M. R. Narayanaswami, for Respondent.

R.M. *Petition dismissed.*

Panchapakesa Ayyar, J.
7th February, 1958.

Ramanathan Chettiar *v.* Somasundaram Pillai.
C.R.P. No. 1185 of 1954.

Court-fees Act (VII of 1870), section 7 (iv) (c) and Madras Court-fees and Suits Valuation Act (XIV of 1955), section 25—Suit by landlord against a number of tenants of several items of land for appointment of a receiver on the ground that the tenant have entered into a conspiracy to remove the crops without paying his waram dues—Valuation for purpose of Court-fee.

A suit by a landlord against a number of tenants of several items of lands for the appointment of a receiver on the allegation that the tenants have entered into a conspiracy to deprive him to his legitimate waram share of the crops by removing the entire crop, cannot be treated as a bundle of suits, each attracting a fixed Court-fee under Article 17 (*b*) of Schedule II of the Court-fees Act of 1870. To such cases section 7 (*iv*) (*c*) of the Act will apply. But Court-fee need not be paid on the market value of the lands but only on the value of the waram claimed, *i.e.*, the estimate of the value of the plaintiffs share of the crop, since the title to the land is not in dispute.

A. Sundaram Ayyar, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Orders accordingly.*

Ramaswami, J.
14th February, 1958.

Coimbatore Municipality *v.* Narayanan.
Crl. Mis. Pet. No. 1275 of 1957.

Criminal Procedure Code (V of 1898), section 417 (4)—Delay in applying for Special Leave—If could be excused—Limitation Act (IX of 1908), section 5—Applicability.

The Code of Criminal Procedure is a general law relating to procedure and not a special law within the meaning of section 29 of the Limitation Act. Hence section 5 of the Limitation Act is applicable in terms to applications for Special Leave under section 417 (4) of the Code of Criminal Procedure and the delay, if any, in filing such an application can be excused.

S. Mohan Kumaramangalam and *N. Natarajan*, for Petitioner.

V. T. Rangaswami Ayyangar, for Respondent.

V. V. Radhakrishnan for Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Orders accordingly.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Bose, JJ.
18th February, 1958.

K. S. Srinivasan *v.* Union of India.
C.A. No. 78 of 1957.

Constitution of India (1950), *Articles* 310 *and* 311—*Civil Service* (*Temporary Service*) *Rules*, 1949—*Quasi-Permanent Service.*

Following the decision of the Court in *Parshotam Lal Dhingra* v. *Union of India*, 1957 S.C.J. 217 the majority rejected the appeal that the impugned orders violate the constitutional guarantee given by Article 311 (2) to the appellant who is the holder of a Civil post under the Union.

Per Bose, J. (dissenting) :—Equity required that the person, who was least in error, should suffer less. In the present case the respondent had transferred the appellant on the assurance of quasi-permanency and therefore it would be in consonance with justice to give him this benefit and allow the appeal.

K. S. Krishnaswami Aiyangar, for Appellant.

P. A. Mehta, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, P. B. Gajendragadkar, JJ.
18th February, 1958.

Kashinath Sankarappa Wani *v.* New Akot Cotton Ginning and Pressing Co.
C.A. No. 77 of 1954.

Limitation Act (*IX of* 1908), *section* 14—*The Commercial Documents Evidence Act* (*XXX of* 1939).

The Court admitted the certified copies of the balance sheet of the Respondent Co., in evidence under the Commercial Documents Evidence Act but held that this admission of the document was of no avail to the Appellant to get over the limitation bar.

C. B. Aggarwala, Senior Advocate with *Ratnaparkhi Anant Govind*, for Appellant.

Veda Vyasa, Senior Advocate with *Ganpat Rai*, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.
18th February, 1958.

Chintaman Rao *v.* State of Madhya Pradesh.
Cr. A. No. 93 of 1955.

Factories Act (*LXIII of* 1948), *section* 2 (*l*)—"*Workmen*"—*Essentials to come under the definition of* "*workmen*".

Attendance and other registers were required to be maintained with regard to the employment of persons who could be classed as workmen under section 2 (*l*) of the Factories Act. [In the instant case it was held that in the light of the particular contract between the appellants and the contractors, the latter and their employees were outside the scope of the definition and hence the conviction of the appellant was bad.]

M. C. Setalvad (Attorney-General of India), for Appellant.

I. N. Shroff, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Bose, JJ.
19th February, 1958.

Tata Iron & Steel Co. *v.* State of Bihar.
C.As. Nos. 412 & 413 of 1956.

Bihar Sales Tax Act (*XIX of* 1947) *as amended in* 1948, *section* 2 (g)—*Constitutional validity and scope.*

Government of India Act (1935), *Item No.* 48 *of List II of the Seventh Schedule—Sales of Goods Act* (*III of* 1930)—*Scope.*

By the Majority Judges :—The second proviso to section 2 (*g*) of the Bihar Sales Tax Act provides that the sale of any goods which were actually in Bihar at the time when in respect thereof the contract of sale, as defined in section 4 of the Indian Sales of Goods Act was made, or which were produced or manufactured in Bihar by the producer or manufacturer there, should wherever the delivery or contract of sale was made, be deemed for the purposes of this Act to have taken place in Bihar. Section 2 (*g*) of the Bihar Sales Tax Act is therefore valid and the Levy of Sales Tax from July, 1947 to March, 1949 was constitutionally valid.

Per Bose, J.—The taxing provisions did not bear a sufficient nexus to the sale to make them a valid exercise of legislative power under Entry 48 of List II of Schedule VII of the Government of India Act, 1935.

M. C Setalvad (Attorney-General of India), for Appellants.

Mahavir Prasad (Advocate-General) Bihar, for Respondent.

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and P. B. Gajendragadkar, JJ.
25th February, 1958.

Kashi Bai *v.* Sudharani Ghosh
C.As. Nos. 118 & 119 of 1956.

Limitation Act (*IX of* 1908), *section* 28—*Adverse possession of a coalmine.*

" In our opinion the operations carried on by the appellant were inconsistent with the continuous, open and hostile possession or with the assertion of hostile title for the prescribed period of 12 years necessary to constitute adverse possession."

M. C. Setalvad (Attorney-General of India), for Appellant.

N. C. Chatterji, for Respondents.

G.R. ——— *Appeals dismissed.*

Balakrishna Ayyar, J.
12th February, 1958.

Subramania Odayar *v.*
Board of Revenue, Madras.
W.P. No. 967 of 1957.

Madras Cinemas Regulation Act (*IX of* 1955), *rules* 4 *and* 109(1)—' *Site* '—*Meaning of—Rule* 4—*If binding on the Court in the interpretation of the rules.*

The word ' site ' can be properly used to describe either the exact extent of land occupied by a building or the larger area of which such extent forms a part. In which of the two senses the word is used in a particular statute or rule will depend upon the context.

The word ' site ' used in rule 109 (1) of the Rules framed under the Madras Cinemas Regulation Act, relating to touring cinemas, if understood in the context of the license issued for a specified extent of land, could only mean the entire extent of land and not only that extent which was actually occupied by the cinema shed. The prohibition under that rule against the renewal of a license granted for a site before an interval of three months after the previous license cannot be evaded by shifting the cinema shed to another part of the same site covered by the earlier licence.

Rule 4 of the Rules which provides that any question as to the interpretation of the Rules should be referred to the Government and whose decision is stated to be final, is not binding on the High Court in exercise of its powers under Article 226 of the Constitution.

S. Mohan Kumaramangalam and *N. Natarajan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. M. Seshadri* and *S. Bashkaran*, for Respondent.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, and P. B. Gajendragadkar, JJ.
10th *March*, 1958.

White *v.* White and others.
C.A. No. 19 of 1956.

Divorce—Acts of adultery—Concurrent finding of facts by Lower Courts—Interference with by the Supreme Court—When called for.

The Supreme Court will not ordinarily interfere with findings of fact by the trial Judge and the appeal Court, but if in giving the findings the Courts ignore certain important pieces of evidence, and other pieces of evidence which are equally important are shown to have been misread and misconstrued and the Supreme Court comes to the conclusion that on the evidence taken as a whole no tribunal could, as a matter of legitimate inference, arrive at the conclusion that it has, then interference by the Supreme Court will be called for.

It is plain that when the Court is to be satisfied on the evidence in respect of a matrimonial offence like adultery the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act, and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in martimonial cases.

N. C. Chatterjee, for Appellant.

S. P. Varma, for Respondent No. 1.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
11th *March*, 1958.

M. P. V. Sundararamier and Co. *v.* The State of Andhra Pradesh.
P. Nos. 220, 222, 240, and 380-395 of 1955.

Sales Tax Laws Validation Act (VII of 1956)—Validity and scope—Madras General Sales Tax Act (IX of 1939)—Article 286 of the Constitution.

By the Majority Judges.—The Andhra (Madras) Sales Tax Act clearly purported to impose a sales tax on the class of transactions falling within Article 286 of the Constitution and since such levies had been declared invalid by the Supreme Court in the *Bengal Immunity Company's Case*, (1955) 2 S.C.R. 603 : (1955) S.C.J. 672 : (1955) 2 M.L.J. (S.C.) 168 : (1955) An.W.R. (S.C.) 422, the object of the Validation Act was to validate these taxes. The Sales Tax Laws Validation Act was *intra vires* and its effect could not be confined to the collections and levies already made but extended to any proceedings for the assessment of tax under section 22 of the Madras Sales Tax Act.

PER SARKAR, J.—The Andhra (Madras) Sales Tax Act did not authorize the levy of a sales tax on goods which were delivered in Andhra but in which the property passed to the purchaser in the State of Madras.

K. S. Krishnaswami Aiyangar, for Petitioners.

D. Narasaraju, Advocate-General of the Andhra State, for Respondent.

M. C. Setalvad, Attorney-General of India and *C. K. Daphtary*, Solicitor-General of India, for the Union of India—Intervenors.

V. K. Thiruvenkatachari, Advocate-General of Madras, for Intervenors—Madras State.

G.R. *Petitions and Appeal dismissed.*

[SUPREME COURT.]

Syed Jafer Imam, P. B. Gajendragadkar and Vivian Bose, JJ.
11th March, 1958.

Virsa Singh *v.* The State of Punjab.
Cr. A. No. 90 of 1957.

Penal Code (XLV of 1860), section 300, Thirdly—Scope—Gist of offence—Intention to cause death—If essential.

"No one has the licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. Once the four elements of section 300, Indian Penal Code are established by the prosecution, and it is the duty of the prosecution to do so, the offence is one under section 300 "*Thirdly*". It does not matter that there was no intention to cause death".

J. G. Sethi, for Appellant.

M. S. Bindra, for Respondent.

G.R. ——— *Appeal dismissed.*

Rajagopalan, O.C.J., and Basheer Ahmed Sayeed, J.
20th December, 1957.

Aboobucker *v.* Kunhamoo.
C.C.C. A. No. 93 of 1957.

Civil Procedure Code (V of 1908), Order 39, rule 1 (a)—Property in dispute in danger of being wrongfully sold in execution of a decree—Interim injunction—If could be ordered against a person who is not a party to the main suit.

An interim relief is granted to a person in any cause on the footing that he is *prima facie* entitled to the right claimed in the main relief and the interim relief. Hence an interim relief sought for during the pendency of a suit could not be greater in scope than what could be granted in the suit itself after the party has established his right to that relief. Whetherit be a question of jurisdiction or one of discretion of Court it is a very relevant factor to be taken into account in deciding whether a Court should or even could grant an interim relief of injunction, especially when the person against whom the interim injunction sought for is not a party to the suit and against whom no relief could be granted in the suit itself.

70 M.L.J. 261, referred and explained.

R. Gopalaswami Ayyangar and *K. N. Balasubramanian*, for Appellant.

S. V. Venugopalachari, P. C. Parthasarathi Ayyangar and *R. Ramaswami*, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramaswami, J.
2nd January, 1958.

Ramaswami *v.* State of Madras.
S.A. No. 707 of 1955.

Madras District Police Act (XXIV of 1859), section 50—'Charge' and 'Officer exercising the powers of a Magistrate'—Meaning of—If applies to departmental enquiries.

The charge contemplated by section 50 of the Madras District Police Act is a charge before a Magistrate in a judicial enquiry and not in a departmental enquiry and the expression 'officer exercising the powers of a Magistrate' in this section would in the circumstances refer only to Magistrates of the First Class. Section 50 of the Act could not in the circumstances apply to departmental inquiries.

R. Gopalaswami Ayyangar, S. Sitarama Ayyar, S. Rajaraman and *P. V. Subramania Ayyar*, for Appellant.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent

R.M. ——— *Appeal dismissed.*

Ramaswami, J. State of Madras *v.*
16th January, 1958. Mohd. Ghani.
S.A. No. 840 of 1955.

Riparian rights—Right of an ayacutdar to crossbund a flowing stream in a channel to irrigate his lands—Scope of rights of different riparian owners—Duty of Government to ensure water supply to riparian owners.

While every riparian owner is entitled to divert and utilize the waters of a stream under whose ayacut his land is registered, for purposes of irrigation he is not entitled to obstruct or crossbund a channel to the prejudice of the ayacutdar lower down the stream. Every riparian owner has a right to the ordinary and normal use of the water flowing in the stream. It is the duty of the Government to look to the regulation and distribution of the available water to all the ayacutdars and in case of any obstruction to the flow of water by an upper riparian owner to the prejudice of the lower riparian owners, the Government should take steps and measures to remove the obstruction and ensure the supply of water to the lower riparian owners. The Government cannot absolve itself of its duties by referring the parties to a civil suit.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Appellant.

S. V. Rama Ayyangar, for Respondent.

R.M. — *Appeal allowed.*

Rajagopalan, O.C.J., and M. Ct. M. Corporation, Ltd. *v.*
Rajagopala Ayyangar, J. Income-tax Officer, Pudukottai.
17th January, 1958. W.P. No. 563 of 1956.

Income-tax Act (XI of 1922), section 18-A (3) and (8)—Scope of.

Sub-section (3) of section 18-A of the Income-tax Act does not cover every case where the Income-tax Officer is not enabled to make a demand under sub-section (1) of that section. A person who has been assessed to Income-tax at some time or other in previous years cannot be brought within section 18-A (3) merely because he was not assessed to tax for some years later. Where a person is not bound to have voluntarily submitted an estimate under section 18-A (3) he cannot come within section 18-A (8).

G. R. Jagadisan and *T. V. Balakrishnan*, for Petitioner.

C. S. Rama Rao Sahib, for Respondent.

R.M. — *Rule absolute.*

Rajagopalan, O.C.J., and Narayanaswami *v.*
Rajagopala Ayyangar, J. Krishnamurthi.
23rd January, 1958. A.A.O. No. 209 of 1957.

Constitution of India (1950), *Article* 191 (1) (*a*) *and* (*e*)—*Representation of the People Act* (*XLVIII of* 1951)—*Office of profit—What amounts to—Employee of Life Insurance Company of India—If holds an office of profit under the Government of India—Regulation of the Corporation prohibiting its employees from standing for election—If amounts to a law disqualifying the candidate within the meaning of Article* 191(1) (*e*) *of the Constitution.*

In order to decide whether a public corporation like the Life Insurance Corporation of India, is a department of the Government, the incorporation of the body he degree of control exercised by the Government, the degree of dependence of the Corporation on the Government for its financial needs and the functional aspects of the Corporation, have all to be considered. Having regard to the object and the scope of the legislation which set up the Life Insurance Corporation of India, the Corporation cannot be considered to be a department or servant or agent of the Government. Service under the Insurance Corporation is not service under the Government of the Union within the Article 191 (1) (*a*) of the Constitution.

The expression ' office of profit ' in Article 191 (1) (*a*) of the Constitution cannot be construed in a wide sense so as to include service in such statutory corporations which have some relation with the Government. Hence an employee of the Life Insurance Corporation is not disqualified from standing for election to the State Assembly, under Article 191(1) (*a*) of the Constitution.

Regulation 29 of the Regulations made by the Life Insurance Corporation under the powers vested in it by section 49 (1) (*b*) of the Life Insurance Act, 1956 is a law made under an Act of Parliament within the meaning of Article 191 (1) (*e*) of the Constitution of India. As that regulation prohibits an employee of the Corporation from standing for election as a member of a Legislative body, such employee will be disqualified under Article 191 (1) (*e*) from contesting an election.

(Historical aspects of the development of public Corporations traced—Nature and functions of such corporations explained—Relationship with Government and scope and extent of Government control examined—Case-law English and Indian discussed.)

The Advocate-General (*V. K. Tirupenkatachari*), *V. V. Raghavan* and *G. Rajan*, for Appellant.

Messrs. Row and *Reddi*, *S. Viswanathan* and *B. R. Dolia*, for Respondent.

R.M. ——— *Appeal allowed.*

Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. Kaliammal *v.* Pongiammal.
29th January, 1958. (S.A. No. 712 of 1954.)

Civil Procedure Code (V of 1908), Order 18, rule 18—Local inspection by Court—Notes of local inspection—Duty to make and keep it as part of the record—Failure to do so—If vitiates the judgment.

It is no doubt true that Order 18, rule 18 of the Code of Civil Procedure does not in express terms require a Court to make notes of local inspection made by it under that rule and keep it as part of the record. But this omission does not mean that a Judge holding local inspection is not under a duty to make notes of such inspection and keep it as part of the record of the case.

Local inspection is done by the Court in its discretion and it could be done at any stage of the proceedings either *suo motu* or at the instance of the parties to the cause. Though a local inspection might influence the judgment of the Court in varying degrees in different cases and in certain cases may have no bearing at all on the judgment, still the facts discovered at a local inspection might consciously or unconsciously influence its conclusions in the judgment. Hence it is not only desirable but necessary, that a Court making a local inspection should make notes of such inspection and the facts observed by the Court and keep it as part of the record. The judgment of a Court which makes a local inspection but fails to prepare notes of that inspection and keep them on record will be vitiated. Case-law discussed.

S. Thyagaraja Ayyar and *N. Vanchinathan*, for Appellant.

G. R. Jagadisan and *A. R. Ramanathan*, for Respondent.

R.M. ——— *Case remanded.*

Balakrishna Ayyar, J. Velu Pillai *v.* Sevuga Perumal.
29th January, 1958. C.M.P. No. 4388 of 1957.

Madras High Court (Appellate Side) Rules—Rule 48-A (2)—If ultra vires*—Excusing delay in the presentation of a petition—Sufficient cause—When amounts to.*

Rule 41-A (2) of the Appellate Side Rules of the Madras High Court is *intra vires* of the powers of the Court as it is within the rule-making powers of the High Court under section 122 of the Code of Civil Procedure. The rule prescribing a specified number of days for presenting an application to the Court is a matter of procedure and the Court has power by rules framed by it to regulate the time relating to procedural matters.

It is true that under rule 41-A (2) of the Appellate Side Rules the High Court is empowered to excuse the delay in presentation of a petition if sufficient cause is shown. The mere fact that the petitioner mislaid the paper in his village is not a sufficient reason to excuse a long delay of 268 days.

K. Arunachala Sastri, for Petitioner.

M. V. Ganapathi and *M. V. Jagannath*, for Respondent.

R.M. ——— *Petition dismissed.*

Balakrishna Ayyar, J.
2nd January, 1958.

Ratna Mudaliar *v.*
E.O. Cantonment Board,
St. Thomas Mount.
W.P. No. 670 of 1956.

Cantonment Act (II of 1924), *section* 203—*Power of a Cantonment Board to levy license fees for opening of a market—If includes a right to collect licence fee for renewal of license.*

Section 203 (1) of the Cantonments Act, 1924, no doubt empowers a Cantonment Board to levy a license fee to open a private market. That means that when once a license is granted and a market is opened section 203 (1) will cease to apply. The term 'open' in section 203 (1) will apply only to the first or initial opening of a market and it cannot be construed in an artificial way to apply to every year when a licence is sought to be renewed. The distinction between 'opening a market' and 'keeping open a market' is clearly recognised by the analogous statutes like the City Municipal and District Municipal Acts. Hence a Cantonment Board is not entitled to charge any fees for the renewal of a licence to keep open a market when once the market has been 'opened' initially in pursuance of a license.

C. Vasudevan, for Petitioner.

The Government Pleader (*B. V. Viswanatha Ayyar*), for Respondent.

R.M. — *Rule absolute.*

Rajagopalan, O.C.J. and
Ganapathia Pillai, J.
23rd January, 1958.

Swamy *v.* Sultan.
A.A.A.O. Nos. 12 and 13 of 1957.

Trade Marks Act (V of 1940), *sections* 20 *and* 73—*Scope—Forum for institution of suits—If section* 73 *applies to passing off actions also—City Civil Court—If has jurisdiction.*

The combined effect of sections 20 and 73 of the Trade Marks Act, 1940, is that a suit to prevent an infringement of a trade mark or for damages for such infringement cannot be instituted at all unless the trade mark is registered. Under the provisions of the Act and even in the case of infringement of registered trade marks such a suit cannot be instituted in any Court inferior to that of a District Court having the requisite jurisdiction such as territorial jurisdiction. Section 20 (2) of the Act no doubt excludes passing off actions from the provisions of the Act. But what is saved under section 20 (2) is only the right of action and it has no bearing on the forum mentioned in section 73. Hence section 73 will apply to passing off actions also and the expression 'otherwise relating to any right in a trade mark' in the section is wide enough to include passing off actions also, where the alleged misuse of a registered trade mark is in issue. Hence such a suit cannot be instituted in the City Civil Court, Madras, which is not a District Court within the meaning of the section.

A decree of the City Civil Court, Madras, in a suit in which the cause of action is based either wholly or in part on the infringement of a trade mark will be a nullity and the execution Court can look into the pleadings to decide whether the Court had jurisdiction to pass the decree.

C. Srinivasachari and *T. R. Sundaram,* for Appellant.

A. Durairaj, for Respondent.

R.M. — *Appeals allowed.*

Rajagopalan, O.C.J. and
Ramaswami, J.
3rd February, 1958.

Panchapakesan *v.* Revenue Board.
W.A. No. 3 of 1958.

Madras Cinemas Regulation Rules, 1957—*Rule* 109 (1)—*Scope of.*

The expression 'place' in rule 109 (1) of the Madras Cinemas Regulation Rules, 1957, would include both the site and the superstructure standing thereon and as such both the site and the superstructure have to be approved afresh by the

authorities before a license in Form C is issued after the expiry of three months' period referred to in the rule. It makes no difference even if the operator applying for a fresh license is the same who held the prior license.

S. Mohan Kumaramangalam and *T. Ramalingam*, for Appellant.

The Additional Government Pleader (*K. Veeraswami*), *G. Ramanujam* and *A. Narayanaswami*, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Ayyar, J. Umapathi *v.* Panchaksharam.
5th February, 1958. W.P. Nos. 914 and 915 of 1957.

Madras Cinemas (Regulation) Act (IX of 1955), *section* 5—*Scope of.*

Constitution of India (1950), *Article* 226—*Jurisdiction under—Nature and scope of.*

Section 5 of the Madras Cinemas (Regulation) Act, 1955, no doubt enumerates certain considerations which the licensing authority is bound to take into account. But it does not exhaustively enumerate all the considerations which the licensing authority may take into account. The mere fact therefore that the licensing authority took into account circumstances not covered by the categories enumerated in section 5, will not, by itself, vitiate the order of the licensing authority. It is of course to be borne in mind that when once the authority takes into consideration matters not expressly enumerated in the Statute it enters into a territory where controversy may become inevitable.

Where between two rival applicants for a license to run a touring cinema the Collector chose one on the gound that the other had already a chance and that everybody should have a chance, when all other considerations are equal, it cannot be said that the consideration taken into account is an unreasonable one.

The jurisdiction of the High Court under Article 226 of the Constitution is a correctional one and the Court has a discretion to interfere or not to interfere with an order. Where it is clear that the authority whose order is sought to be impeached has applied its mind fairly, honestly and impartially and has reached a conclusion which is neither unjust nor improper, the High Court will be slow to interfere with such an order.

G. R. Jagadisan and *T. S. Srinivasan*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), *R. Sundaralingam* and *R. M. Seshadri*, for Respondent.

R.M. ——— *Petition dismissed.*

Ganapathia Pillai, J. Murugayya Pillai *v.* Seethalakshmi.
7th February, 1958. C.R.P. No. 298 of 1958.

Practice—Security directed to be furnished by Court as condition of granting stay—Furnishing of security—Object of—Security of immoveable property directed to be furnished before a specified date—Compliance with—What amounts to.

The object of a Court in directing a party to furnish security in immovable property as a condition of its order is to assure the other party to the dispute or the decree-holder that the benefit of the order in his favour or the decree amount would be eventually paid or would be more easily recoverable. This object could be achieved only if a properly enforceable security bond duly engrossed on stamp-paper and registered according to law is put into Court within the time specified. It may be that mere non-registration of the bond within the time fixed by Court may not be a fatal objection if the bond otherwise duly engrossed on stamp paper is filed in time as in such cases the Court can have the document compulsorily registered. But merely putting into Court a draft security bond on unstamped paper on the last day fixed for furnishing security cannot tantamount to compliance with the order of the Court as the obligor could not be deemed to have done what was required of him as the Court would have still to look to him for the furnishing of

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ.
24th March, 1958.

K. C. Pokhraj *v.* State of Bombay.
Cr. A. Nos. 34-36 of 1956.

Bombay Sales Tax Act, 1946—*Bombay Repealing Act of* 1953, *section* 48 (2)—*Scope—Sanction for prosecution.*

"Notwithstanding the repeal of the Bombay Sales Tax Act of 1956 Act and the said entries, the said repeal shall not affect or be deemed to affect, any right, title, obligation or liability already acquired, accrued or incurred". Accordingly a liability incurred (offence committed, under the repealed Act) is covered by the saving clause embodied in section 48 of the repealing Act.

M. S. K. Shastri, for Appellant.

H. J. Umrigar, for Respondent.

G.R.

Appeals dismissed.

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, B. P. Sinha, S. K. Das and A. K. Sarkar, JJ.
28th March, 1958.

Ramkrishna Dalmia *v.* Justice S. R. Tendolkar.
C.A. Nos. 455-457 of 1957, etc.

Commissions of Inquiry Act (LX of 1952)—*Validity of the Notification appointing a Commission of Inquiry—Constitution of India* (1950)—*Article* 14.

There is no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in abstract, *e.g.*, public health, sanitation or the like or some public evil or prejudice *e.g.*, floods, famine or pestilences, etc. Quite conceivably the conduct of individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry.

A portion of clause 10 of the notification appointing the Commission in the instant case which called upon the Commission to make recommendations about the action to be taken as and by way of securing redress or punishment could not be said to be at all necessary for or ancillary to the purposes of the Commission. The efficacy of the entire Notification was in no way impaired by the deletion of the offending words.

"The facts disclosed in the Notification and the facts brought to our notice by affidavits afford sufficient support to the presumption of the constitutionality of the Notification. It is for the petitioners to allege and prove beyond doubt that other companies or persons similarly situated have been left out and petitioners and their companies have been singled out for discriminatory and hostile treatment. Petitioners have in our opinion failed to discharge that onus".

G. S. Pathak, Senior Advocate with *P. N. Bhagwati, S. K. Kapur* and *Ganpat Rai*, Advocates for Appellants in C. A. Nos. 455-457 of 1957 and Respondents in C. A. Nos. 656-658 of 1957.

C. K. Daphtary, Solicitor-General with *G. N. Joshi* and *R. H. Dhebar*, Advocates for Respondents in C.A. Nos. 455-457 of 1957 and Appellants in C. A. Nos. 656-658 of 1957.

G.R.

Cross-Appeals dismissed.

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
19th March, 1958.

Express Newspapers *v.* Union of India.
P. Nos. 91, 99, 100, 101, 103, 116, 117 & 118 of 1957 and C.A. Nos. 699 and 703 of 1957.

Working Journalist (Conditions of Service) Miscellaneous Provisions Act, (1953), *Constitutional validity—Articles* 14 *and* 19 *of the Constitution.*

" There is no escape from the conclusion that the Wage Board has contravened the mandatory requirements of section 9 of the Act and, in consequence, its decision is *ultra vires* the Act itself".

" We have come to the conclusion that none of the provisions thereof is violative of the fundamental rights enshrined in Article 19 (1) (*a*), 19 (1), 14 and of Article 32 save the provisions contained in section 5 (1) (A) (III) of the impugned Act, which is violative of the fundamental rights guaranteed under Article 19 (1) (*g*) and is, therefore unconstitutional and should be struck down".

" The appellants having substantially succeeded in their respective petitions under Article 32 of the Constitution, the question has now become purely academic and we need not spend any time over them (Civil Appeals). The result, therefore, is that these Appeals will be allowed and the decision of the Wage Board set aside. The order for costs, however, in each of these Appeals will be that all the parties thereto shall bear and pay their own costs thereof".

M. K. Nambiar, K. M. Munshi, S. P. Sinha and *L. K. Jha,* Senior Advocates for Petitioners and Appellants.

M. C. Setalvad, Attorney-General of India, *N. C. Chatterjee* and *A. V. Viswanatha Shastri,* Senior Advocates for Respondent.

G.R.

Petitions and Appeals partially allowed.

[SUPREME COURT.]

N. H. Bhagwati, B. P. Sinha, S. J. Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.
19th March, 1958.

Kasturi & Sons *v.* N. Salivateeswaran.
Petition No. 249 of 1956.

Working Journalist (Conditions of Service) Miscellaneous Provisions Act (1953), *section* 17—*Scope of enquiry—Articles* 14 *and* 19 *of the Constitution of India.*

The inquiry contemplated by section 17 was " a summary inquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employer after establishing his claim in that behalf".

" We are reluctant to accept the view that the Legislature intended that the specified authority or the State Government should hold a larger inquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf".

R. Ramamurthy, Advocate for Petitioners.

Purshotamdas Tricumdas, Senior Advocate for Respondent.

G.R.

Petition dismissed.

[SUPREME COURT.]

N. H. Bhagwati, S. K. Das, Venkatarama Aiyar, A. K. Sarkar, and Vivian Bose, JJ. 21st March, 1958.

State of Bihar *v.* Basawan Singh. Cr.A. No. 134 of 1955.

Penal Code (XLV of 1860), section 161—Evidence of raiders—Independent corroboration—Necessity.

" It is wrong to deduce from *Rao Shiv Bahadur Singh's case* 1954 S.C.R. 1098: 1954 S.C.J. 362 any universal or inflexible rule that evidence of the witnesses of the raiding party must be discarded unless independent corroboration is available.

" All that we say is that, in assessing the value of the testimony of the witness, diverse factors must arise for consideration and the comparative importance of this or that factor must depend on the facts or circumstances of each case.

" No standard higher or stricter than this can be laid down or was laid down in *Rao Shiv Bahadur Singh's case.*

" In view of the findings of fact arrived at by the High Court the only reasonble conclusion is that the respondent is guilty of the offence with which he has been charged and the order of acquittal is clearly erroneous ".

C. K. Daphtary, Solicitor-General, for Appellant.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar S. K. Das, Gajendragadkar and Vivian Bose, JJ. 24th March, 1958.

Raigarh Jute Mills Ltd. *v.* Eastern Railway. C.A. No. 231 of 1954.

Railways Act (IX of 1890), section 28—Railway Rates Tribunal—"Undue preference".

" All cases of unequal rates cannot necessarily be treated as cases of preference because the very concept of preference postulates competition between the person or traffic receiving preference and the person or traffic suffering prejudice in consequence ". The Court also found that the appellant had not succeeded in establishing a case that the rates were " unreasonable or excessive ".

S. C. Isaacs, for Appellant.

H. N. Sanyal, Additional Solicitor-General, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, S. J. Imam and K. Subba Rao, JJ. 24th March, 1958.

Chandranath Mukherjee *v* Tusharika Debi and others C.A. No. 39 of 1955.

Bengal Tenancy Act (VIII of 1855), sections 15 *and* 16.

" A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceedings any rent payable to him as the holder of the tenure until the duties imposed upon him by section 15 have been performed ".

Bagchi for Appellant.

N. C. Chatterjee for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ. 31st March, 1958.

Workmen of Assam Co. *v.* Assam Co. Ltd. C.A. No. 34 of 1957.

Industrial Disputes Act (XIV of 1947)—Payment of bonus—Computation.

Applying judgment in C.A. Nos. 217 to 219 of 1956 decided on 5th November, 1957—*Sree Meenakshi Mills, Ltd.* v. *Their Workmen* and the formula adopted therein *i.e.,* " distributable surplus has to be ascertained after providing from the gross profits for (1) depreciation, (2) rehabilitation, (3) return at 6 per cent. on the paid-up capital, (4) return on the working capital at a lesser but reasonable rate, and (5) for an estimated amount in respect of the payment of income-tax ". The decision of the Labour Appellate Tribunal was, therefore, set aside and that

of the Industrial Tribunal restored, with the modification that the company should make available an additional amount required for the payment of a bonus to the artisans of the company. The Court also approved " the unit scheme for the bonus already adopted by the Company.

C. B. Aggarwala, for Appellant.

Goswami, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
1st April, 1958.

State of Madras *v.* Ganon Dunkerley & Co. Ltd.
C. A. No. 210 of 1956.

Madras General Sales Tax Act (*IX of* 1939), *Sale of Goods Act* (*III of* 1930)—*Government of India Act* (1935), *Entry* 48, *List II of the Seventh Schedule—Meaning of the term " Sale."*

" According to the law both in England and India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods, which of course pre-supposes capacity to contract, that it must be supported by consideration and that as a result of the transaction, property must actually pass in the goods. Unless all these elements are present, there can be no sale ". The expression 'sale of goods' in Entry 48 of the Government of India Act is a term of law, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the present case, one, entire and indivisible and that is its form there is no sale of goods and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale ".

V. K. Thiruvenkatachari, the Advocate-General of Madras, for Appellant.

A. V. Vishwanath Shastri, for Respondent.

C. K. Daphtary, Solicitor-General for Union of India—*D. Narasaraju*, Advocate-General, for the State of Andhra, *Mahavir Prasad*, Advocate-General for the State of Bihar, *S. M. Sekhri*, Advocate-General for the State of Punjab, *T. M. Sen*, for the State of Mysore and *S. B. Sahrya*, for the State of Kerala, for Intervenors.

G.R. *Appeal dismissed.*

Panchapakesa Ayyar, and Basheer Ahmed Sayeed, JJ.
3rd February, 1958.

Rajalakshmi Ammal *v.* Muthuswami Gounder.
L.P.A. No. 198 of 1957.

Civil Procedure Code (*V of* 1908), *Order* 40, *rule* 1—*Power of Court to appoint Receiver in simple money suits—Scope and extent of.*

It is no doubt true that the powers of a Court under Order 40, rule 1, Civil Procedure Code are wide and in extraordinary cases the Court has jurisdiction to appoint a Receiver in simple money suits even before decree, provided of course the Court is satisfied that it is just and convenient to appoint a Receiver.

But ordinarily in simple money suits the plaintiff has a right to pursue his remedies by way of an attachment before judgment and a Court will not exercise its discretionary powers of appointing a Receiver in such cases unless there are extraordinary circumstances.

R. Gopalaswami Ayyangar, M. Krishna Bharathi and *M. S. Sethu*, for Appellant.

T. K. Subramania Pillai and *S. Mohan*, for Respondent.

R.M. *Appeal dismissed.*

Rajagopalan, O.C.J. and Ramaswami, J.
4th February, 1958.

Munia Servai *v.* Hanuman Bank, Ltd.
O.S.A. No. 3 of 1958.

Banking Companies Act (*X of* 1949)—*Jurisdiction of High Court under—If Ordinary Original Civil Jurisdiction—Execution of orders under—Limitation for—Limitation Act* (*IX of* 1908), *Article* 183—*Applicability.*

The jurisdiction conferred on the High Court by the Banking Companies Act, 1949 is part of its Ordinary Original Civil Jurisdiction within the meaning of Article 183 of the Limitation Act so as to attract the twelve-year period of limitation for

execution of orders made under that Act. It makes no difference whether this jurisdiction is conferred by Clause 12 of the Letters Patent or by separate enactment.

I.L.R. 13 Bom. 520, followed.

59 M.L.J. 17 : I.L.R. 53 Mad. 237 and A.I.R. 1951 All. 362, referred.

S. Rangaswami Ayyangar and *N. Sankaran*, for Appellant.

S. Swaminathan, for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopalan, O.C.J. and Ramachandra Ayyar, J. Narayanaswami *v.* Mohan Prasad.
11th February, 1958. O.S. Appeal No. 165 of 1953.

Limitation Act (IX of 1908), Articles 74 and 116—Covenant to pay a debt in instalments at stipulated period—Limitation how computed—Clause enabling creditor to sue for all the instalments together after the last instalment became due—If could extend the period of limitation.

Where a bond provided that a debt secured thereunder will be paid in specified instalments at stated intervals, the limitation for the recovery of each of such instalments will run from the time when it became due. Article 74 read with Article 116 of the Limitation Act would apply to recovery of such instalments. The mere fact that the parties had agreed that the payment of the instalments need not be enforced as and when they become due, but can be enforced after all the instalments become due and payable, cannot have the effect of extending the period of limitation.

Generally speaking, interest due on a debt is only an accessory to the principal and where the claim in regard to the principal is barred the claim in regard to the interest would equally be barred. An exception to this rule is however recognised in cases where there is a separate covenant to pay interest.

Where there is a covenant to pay a debt with interest, but the principal amount is agreed to be paid in instalments, the mere fact that the recovery of certain instalments are barred by limitation cannot affect the recovery of the interest due on the principal debt as the covenant to pay interest is not ancillary to each of the instalments. The covenant to pay interest on the original debt is independent of the covenant to pay the instalments and as such a separate cause of action lies in respect of the interest.

(Case-law reviewed.)

P. S. Ramaswami Ayyangar, for Appellant.

B. V. Ramanarasu and *M. L. Nayak*, for Respondent.

R.M. ——— *Appeal allowed.*

Balakrishna Ayyar, J. Sitaraman *v.* Pattabhiraman.
13th February, 1958. C.M.P. No. 333 of 1958.

Civil Procedure Code (V of 1908), section 148—Power of Court under.

Section 148 of the Code of Civil Procedure no doubt empowers the Court in its discretion to extend the time fixed by it for doing an act. But that section presupposes the pendency of the suit, appeal or proceedings in which time was granted. Where the proceeding ceases to exist consequent upon a default clause provided in the order itself section 148 of the Code can have no application. Where an order directing security to be furnished has a default clause the Court has no power to extend the time for furnishing the security.

53 M.L.J. 494 ; (1956) An. W.R. 177, followed.

R. Gopalaswami Ayyangar and *V. S. Ramakrishnan*, for Petitioner.

Srinivasa Ayyar and *G. R. Jagadisan*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramaswami, J. Srinivasa Pillai *v.* Kanniappa Pillai.
13th February, 1958. S.A. No. 1629 of 1951.

Negotiable Instruments Act (XXVI of 1881), section 87—Material alteration of an instrument—What is—Affixture of additional stamp to make up deficiency—If amounts to material alteration.

The test of what amounts to material alteration of a negotiable instrument within the meaning of section 87 of the Negotiable Instruments Act is to see whether

the alteration affects the rights or liabilities of the parties to the bill, whether it affects them prejudicially or not. Any change which varies the original legal effect and operation of the bill, unless assented to by the party affected thereby, will be a material alteration.

A promissory note which is not properly stamped is legally unenforceable and any addition of stamp to make it viable as a promissory note, without the consent of the promissor, is a material alteration which will render the instrument void.

Law in England and America explained—Case law discussed.

K. S. Naidu, for Appellant.

T. R. Ramachandran, for Respondent.

R.M. ——— *Appeal dismissed.*

Balakrishna Iyer, J. Kuppuswami *v.* Ketty Muthu.
21st February, 1958. C.R.P. No. 1670 of 1957.

Madras District Municipalities Act (V of 1920), sections 44 (2) and 45—Electoral rolls for municipal elections—Power of Government to direct revision—Scope of—Rules for decision of election disputes under—Rule 2—Time for presentation of election petition.

Section 44 (2) of the Madras District Municipalities Act, 1920, as amended in 1950, takes away the power of the State Government to give directions for the preparation and publication of electoral rolls for municipal elections which they possessed under the former provision. Under the section as it stands at present the only power of the State Government is to direct the publication of such portions of the electoral roll which relate to the Municipality, out of the electoral roll prepared and revised under the Representation of People Act, 1950. The election authority has no power to add any new names to the list and their only power is to bring the list in accord with the electoral roll prepared for the relevant Assembly Constituency.

The prepositions 'if' and 'from' in rule 2 and the proviso respectively of the rules framed for decision of election disputes under the District Municipalities Act mean the same and the preposition 'of' is used sometimes equivalent to 'after'. Hence in either case the first day of reckoning the period of seven days fixed under the rule can be excluded.

K. Narayanaswami Mudaliar and *M. Thirugnanasundaram*, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondents.

R.M. ——— *Petition dismissed.*

Somasundaram, J. Santhanam *v.* Somasundaram.
4th March, 1958. C.R.P. No. 1343 of 1957.

Madras Cultivating Tenants Protection Act (XXIV of 1956), section 9 (2)—Appeal under—'Every decision of a Rent Court'—If includes decisions on interlocutory applications as well.

A right of appeal from the decision of a Court or Tribunal is not an inherent right but is one expressly conferred by the Statute. The right of appeal conferred by section 9 (2) of the Madras Cultivating Tenants Protection Act should be construed in the light of the foregoing sub-section, *viz.*, section 9 (1) of the Act. That is, only decisions falling within the scope of section 9 (1) will be appealable under section 9 (2) and decisions on ancillary applications in the main petition for the purposes mentioned under section 9 (1) of the Act are not decisions that are appealable under section 9 (2) of the Act. The expression 'every decision' in section 9 (2) of the Act could refer only to the final decision in regard to the rights of parties with reference to the dispute under section 9 (1) and does not include orders passed on Interlocutory Applications.

'Decision' Meaning of Explained.

G. R. Jagadisan, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar,
S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
7th April, 1958.

Mithan Lal, etc. *v.*
State of Delhi.
Petitions Nos. 15 and 16 of 1955.

Bengal Finance (Sales Tax) Act as extended to Delhi—Vires—Article 246 *of the Constitution of India* (1950)—*Part C States (Laws) Act.*

The decision of the Supreme Court in C.A. No. 210 of 1956, *State of Madras* v. *Gannon Dunkerley & Co., Ltd.*, dated 1st April, 1958, [(1958) 1 M.L.J. (N.R.C.) 50] did not apply to the present case. " It was submitted that the Delhi law was not enacted by a State Legislature but had been extended by Parliament under Article 246 (4) of the Constitution, and there was no bar on Parliament making a law to tax transactions other than a 'sale of goods'. Whether we view the notification as one extending a subsisting statute to Delhi or as extending it with modifications so far as the impugned provisions are concerned, they are *intra vires*."

R. L. Aggarwal, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondents.

T. M. Sen, for the States of Madras and Mysore, *G. C. Mathur*, for the State of U. P. and *S. B. Sehrva*, for the State of Kerala, Interveners.

G.R. ——— *Petitions dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar,
S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
7th April, 1958.

Pyarelal Hari Singh & Co. *v.*
The State of Punjab.
Petition No. 128 of 1957.

East Punjab General Sales Tax Act, 1948—" *Sale of goods* "—*Supply of the materials used in construction works.*

Applying the deceision of the Supreme Court in C.A. No. 210 of 1956, *State of Madras* v. *Gannon Dunkerley & Co., Ltd.*, dated 1st April, 1958 [(1958) 1 M.L.J. (N.R.C.) 50] the provisions of the East Punjab General Sales Tax, 1948, imposing sales-tax on the supply of the materials used in construction works, treating it as a 'sale of goods' were held to be *ultra vires*.

Gopal Singh, for Petitioner.

N. S. Bindra, for Respondents.

G.R. ——— *Petition allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur
and A. K. Sarkar, JJ.
7th April, 1958.

J. K. Chaudhuri *v.*
R. K. Dutta Gupta.
C.A. No. 321 of 1957.

Gauhati University Act—Powers of the University—If can interfere with order of governing body of a College dismissing its Principal.

Under the provisions of the Gauhati University Act the University had no power to interfere with the action taken by the governing body of a College in dismissing its Principal. The term " employee " did not include a Principal, and the jurisdiction of the University under the Act extended only to that category of employees who were classed as teachers.

R. Chaudhuri, for Appellant.

N. C. Chatterji, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., S. K. Das, Gajendragadkar,
and Vivian Bose, JJ.
11th April, 1958.

Nagpur Elec. Light & Power Co. *v.*
Shreepat Rao.
C.A. No. 5 of 1958.

Madhya Pradesh Industrial Disputes Act—Discharge of employee under the Standing Orders of a Company—Legality.

On a true construction of the Standing Orders of the company it must be accepted that the respondent was governed by them. In view of the fact that he was covered

by these standing orders and his discharge had been effected under the appropriate orders, the orders of the company were held to be legal and effective.

M. C. Setalvad, Attorney-General of India, for Appellant.

R. S. V. Mani, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
14th April, 1958.

B. N. Srikantiah *v.* State of Mysore.
Cr. As. Nos. 120 and 121 of 1955.

Penal Code (XLV of 1860), *section* 34 *and Criminal Procedure Code (V of* 1898), *section* 537—*Scope.*

Applying the previous decisions in (1955) 2 S.C.R. 1140 : 1956 S.C.J. 182 : (1956) 1 M.L.J. (S.C.) 100 : (1956) A.W.R. (S.C.) 100 and A.I.R. 1956 S.C. 171, the appellant's appeal was dismissed because the omission to mention section 34 of the Indian Penal Code in the charge cannot affect the case unless prejudice is shown to have resulted in consequence thereof. The question as to effect of omission to mention section 34, Penal Code, is academic.

(1929) L.R. 57 I.A. 71 at 76 and (1947) 1 M.L.J. 219 : L.R. 74 I.A. 65 at 75 : I.L.R. (1948) Mad. 1 (P.C.) considered.

V. Krishnamurthy, for Appellant.

G. Channappa, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. R. Das, C.J., N. H. Bhagwati, S. K. Das, J. L. Kapur and Vivian Bose, JJ.
15th April, 1958.

Mahadayal Premchandra *v.* C.T.O., Calcutta.
C.A. No. 344 of 1957.

Sales tax—Sales-tax on Commission Agent—Procedure for getting 'instructions' from Assistant Commissioner.

"The procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department concerned".

N. C. Chatterji, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.
15th April, 1958.

Sales Tax Officer, Cuttack *v.* B. C. Patel & Co.
C.A. No. 23 of 1956.

Orissa Sales Tax Act, 1947—*Extra-Provincial Jurisdiction Act*, 1947—*Pre and Post-Constitution Assessment periods—Article* 286 *of the Constitution—Bengal Finance (Sales Tax) Act*, 1941.

By three separate Judgments the appeal was partly allowed.

The notification of March 1, 1949, was not in conformity with law, but the assessment orders for the pre-Constitution period were justified under section 4 (2) of the Orissa Sales Tax Act, as all requirements of sub-section (2) were fulfilled in this case. The effect of the invalid notification under sub-section (1) was that there was no liability thereunder and no dealer was liable to pay tax under that sub-section. It, however, did not mean that any dealer, who properly came under sub-section (2) could escape liability to pay tax. The assessments came under the purview of Article 286 (1) (*a*), as also section 30 (1) (*a*) (*i*) of the Act, and so were held to be without jurisdiction.

C. K. Daphtary, Solicitor-General of India, for Appellants.

Nemo, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur, and A. K. Sarkar, JJ.
15th April, 1958.

Seth Gangadhar *v.* Shankarlal.
C.A. No. 150 of 1954.

Transfer of Property Act (IV of 1882)—Clog on equity of redemption—Usufructuary mortgage for 85 years.

The term of the length of the period of mortgage was not by itself a clog on the right of redemption.

Tarachand Brijmohanlal, for Appellant.

S. S. Didwani and *K. L. Mehta*, for Respondents.

G.R. *Appeal dismissed.*

Ramaswami, J.
13th March, 1958.

Veluchami, *In re.*
Cr. P.C. No. 883 of 1957.

Madras Borstal Schools Act (V of 1926), section 7 (1) and Criminal Procedure Code (V of 1898), section 349—Submission of records by a Magistrate under—Difference between.

Under section 349 of the Code of Criminal Procedure a magistrate of the second or third class can submit the proceedings to the District or Sub-Divisional Magistrate to whom he is subordinate only under two circumstances, *viz.*, (1) where the punishment to be inflicted is different in kind from that which he is empowered to inflict and (2) the punishment which the offence deserves is more severe than the one which he is empowered to inflict. It is open to the Magistrate to whom the proceedings are submitted, if he thinks fit, to examine the parties or witnesses and come to his own conclusion regarding the conviction itself and pass the appropriate sentence or order. But in cases of submission of records under section 7 (1) of the Madras Borstal Schools Act it is the duty of the Magistrate who submits the records to find the accused guilty and transmit the records without passing any sentence. In such cases it is open to the Magistrate to whom the records are sent to make enquiries and come to his own conclusion only as regards the sentence, *viz.*, whether the adolescent offender should be detained in a Borstal School or not. As regards the finding of guilty he is bound by the opinion of the Magistrate who transmitted the records.

The Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. *Reference rejected.*

Ramachandra Iyer, J. Sellamuthu Chettiar *v.* Veerasikkhiah Gounder.
14th March, 1958. C.R.P. Nos. 740 and 761 of 1957.

Madras Cultivating Tenants Protection Act (XXV of 1957) as amended by Madras Act XIV of 1956, section 4 (5)—*Cultivating tenant evicted in execution of decree—When entitled to be restored to possession.*

Under section 4 (5) of the Madras Cultivating Tenants Protection Act, 1955, as amended by Act XIV of 1956, a cultivating tenant, who has been dispossessed of his holding after the commencement of the Act in execution of a decree, is entitled to apply for restoration to possession. The mere fact the suit was pending when the Act came into force and the cultivating tenant did not raise any defence on the ground that he is entitled to the benefit of the Act will not preclude him from claiming his right to restoration of possession as the right is given even in cases where the tenant has been evicted under a decree of Court.

Where land in the occupation of a tenant was sold and the purchaser required the tenant to attorn to him and the tenant refused to do so and set up title in the vendor, his previous landlord, it cannot be said that his possession is under an agreement, express or implied with the purchaser owner. On the contrary the conduct of the tenant in denying the title of the purchaser would negative any such inference.

M. Natesan, for Petitioner.

U. Somasundaram and *P. Kothandaraman*, for Respondent.

R.M. *Case remanded.*

Ramaswami, J. V. P. S. Subbiah Chettiar, *In re.*
20th March, 1958. S.R. No. 4968 of 1958.

Hindu Marriage Act (XXV of 1955), *section* 28—*Scope of—Proceedings under the Act—Appeal against order if lies—Revision against order—When lies.*

Reading section 28 of the Hindu Marriage Act, 1955, in the context of section 104 and Order 43, rule 1, of the Code of Civil Procedure, it is clear that no appeal could lie from an order under the Act as it is not made an appealable order under the Code. A person aggrieved by an order under the Act may, in appropriate cases, be entitled only to file a revision to the High Court.

K. S. Venkataramani and *S. B. Mani*, for Appellant.

V. Ramaswami, for Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Answer accordingly.*

Rajagopalan, J. Kothandaraman *v.*
27th March, 1958. Chief Conservator of Forests.
W.P. No. 1192 of 1956.

Civil Services Classification, Etc., Rules, rule 17 (*b*)—*Applicability to termination of probation of civil servants.*

The procedure prescribed by rule 17 (*b*) of Civil Services Classification, etc., Rules would not apply to proceedings taken to terminate the probation of civil servants.

Quaere.—Whether a mere violation of rule 17 (*b*) of the Civil Services Classification, etc., Rules, by itself, without anything more, would justify the invoking of the jurisdiction of the High Court under Article 226 of the Constitution ?

Md. Askarali, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Petition dismissed.*

[SUPREME COURT.]

N. H. Bhagwati, J.L. Kapur and A. K. Sarkar, JJ.

22nd April, 1958.

Kamaraja Nadar *v.* Kunji Thevar, etc.

C. A. Nos. 763 of 1957, 764 of 1957 and 48 of 1958.

Representation of the People Act (XLIII of 1951), *sections* 82 *and* 117—*The term " contesting candidate" in the Representation of the People Act includes a candidate who has retired from the election contest after the last date for withdrawal but before the final poll is taken.*

If the provisions of section 82 which prescribes who shall be joined as respondents to the petition are not complied with, the Election Commission is enjoined under section 85 of the Act to dismiss the petition and similar are the consequences of non-compliance with the provisions of section 117 relating to deposit of security for costs. If the Election Commission however does not do so and accept the petition, it has to cause a copy of the petition to be published in the Official Gazette and a copy thereof, to be served by post on each of the respondents and then refer the petition to an Election Tribunal for trial. Section 90(3) similarly enjoins the Election Tribunal to dismiss an election petition which does not comply with the provisions of section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85. Section 90 (3) is mandatory and the Election Tribunal is bound to dismiss such a petition.

The words "in favour of the Secretary to the Election Commission" used in section 117 are directory and not mandatory in their character. No such literal compliance with the terms of section 117 is at all necessary as is contended for on behalf of the appellant before us.

Having regard therefore to the conclusion reached above in regard to the non-compliance with the provisions of section 82, Civil Appeal No. 763 of 1957 will be allowed, the orders of dismissal made by the High Court on the Writ Petition Nos. 531 of 1957 and 532 of 1957 will be set aside, the orders passed by the Election Tribunal, dated July 5, 1957 will be vacated and the Election Petition No. 147 of 1957 will be dismissed with costs.

Civil Appeal No. 764 of 1957 also shares a similar fate. The first respondent therein did not join as party respondents to his petition the two candidates whose names had been included by the returning officer in the list of contesting candidates but who had subsequently retired from the contest before the commencement of the poll. They were necessary parties to the petition in so far as the first respondent had claimed a further declaration that he himself be declared duly elected under section 101. The Election Petition No. 74 of 1957 filed by him was thus liable to be dismissed for non-joinder of necessary parties under section 90(3) of the Act. This appeal will also be accordingly allowed, the orders passed by the High Court in Writ Petitions Nos. 573 and 574 of 1957 will be set aside, the orders passed by the Election Tribunal on July 13, 1957, will be vacated and Election Petition No. 74 of 1957 will be dismissed, the first respondent will pay the appellant's costs throughout.

So far as Civil Appeal No. 48 of 1958 is concerned, the difficulty which faces the appellant is that we have nothing on the record of the appeal to show what were the exact terms of the deposit made by the second respondent under section 117.

We are, therefore, of the opinion that the orders passed by the High Court in M.J.C. No. 480 of 1957 and by the Election Tribunal in Election Petition No. 341 of 1957 were wrong and ought to be set aside.

The preliminary objection must be entertained and decided by the Election Tribunal to avoid unnecessary expense and delay.

M. C. Setalvad, Attorney-General, for Appellant in C. A. No. 763 of 1957.
Ganpathy Iyer, for Respondent in C.A. No. 763 of 1957.
Rama Reddi, for Appellant in C.A. No. 764 of 1957.
R. Ganpathi Aiyar, for Respondents in C.A. No. 764 of 1957.
Parshotam Das Tricumdas, for Appellant in C.A. No. 48 of 1958.

M—N R C

R. Patnaik, for Respondents in C.A. No. 48 of 1958.

Y. B. Chavan, C. K. Daphtary, Solicitor-General of India, for Intervener in C.A. No. 763 of 1957.

G.R. ——— *Appeals decided as above.*

[SUPREME COURT.]

N. H. Bhagwati, J. L. Kapur and A. K. Sarkar, JJ.
22nd April, 1958.

T. M. Bassappa *v.* D. Ayyappa.
C.A. No. 76 of 1958.

Representation of the People Act (*XLIII of* 1951), *section* 97—*Order* 23, *rule* 1, *Civil Procedure Code—Scope.*

There is no power in the Election Commission to allow a petitioner to withdraw or abandon a part of his claim either by having resort to Order 23, rule 1, Civil Procedure Code or otherwise. If that is so, the right of recrimination which has once accrued to the returned candidate or any other party under section 97 of the Act cannot be taken away, and the returned candidate or any other party to the petition would in such circumstances be entitled to give evidence to prove that the election of the petitioner or any other candidate sponsored by him would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

G. S. Pathak, for Appellant.

Rama Reddy, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. R. Das, C. J., T. L. Venkatarama Aiyar, S. K. Das, P. B. Gajendragadkar and Vivian Bose, JJ.
23rd April, 1958.

Mohd. Hanif Quareshi *v.* State of Bihar, etc.
Petitions Nos. 58, 83, 84, 103, 117, 126, 127, 128, 248, 144 and 145 of 1956; 129 of 1957.

Bihar Act (*II of* 1956)—*Uttar Pradesh Act* (*I of* 1956)—*C. P. and Berar Act* (*III* 1949)—*Articles* 13, 19, 25, 48, 245 *and* 246, *Entry* 15, *List II of Seventh Schedule of the Constitution of India—Acts prohibiting slaughter of cows, etc.—Constitutional validity.*

" The result is that we uphold and declare that the Bihar Act in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is constitutionally valid and we hold that, in so far as it totally prohibits the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo), without prescribing any test or requirement as to their age or usefulness, it infringes the rights of the petitioners under Article 19(1) (*g*) and is to that extent void."

" As regards the Uttar Pradesh Act we uphold and declare, for reasons already stated, that it is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but we hold that in so far as it purports to totally prohibit the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness, it offends against Article 19(1) (*g*) and is to that extent void ".

" As regards the Madhya Pradesh Act we likewise declare that it is constitutionally valid in so far as it prohibits the slaughter of cows of all ages and calves of cows, male and female, but that it is void in so far as it totally prohibits the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness. We also hold that the Act is valid in so far as it regulates the slaughter of other animals under certificates granted by the authorities mentioned therein.

H. J. Umrigar and *Frank Antoney*, for Petitioners.

C. K. Daphtary, Solicitor-General of India and *Mahavir Prasad*, Advocate-General, Bihar, for the State of Bihar.

H. N. Sanyal, Additional Solicitor-General of India, for the State of Uttar Pradesh.

Adhekari, Advocate-General, Madhya Pradesh, for the State of Madhya Pradesh.

Shri Thakar Dass Bhargave, *Amicus-curiae.*

G.R. ——— *Petitions partly allowed.*

Rajagopalan, O.C.J., and Ramachandra Iyer, J. Sarojini *v.* Krishnamurthi.
13th February, 1958. L.P.A. No. 140 of 1957.

Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949) *(since repealed by Central Act XXV of* 1955), *section* 5 (8)—*Provision as to custody of children while ordering dissolution of a marriage—Scope of power of Court.*

Under section 5 (8) of the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 (since repealed by the Central Act (XXV of 1955) the Court gets jurisdiction to make orders as to the custody of children only when it orders the dissolution of a marriage. Where the Court refuses the prayer for dissolution of the marriage the Court has no jurisdiction to go into the question of custody of the children.

D. R. Krishna Rao and *I. Chakrapani*, for Appellant.

E. Krishnamurthi, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J. Athmanatha Thevar *v.* Rangaswami Thevar.
20th February, 1958. C.M.P. No. 6738 of 1957.
(Appeal No. 1232 of 1953.)

Practice—Appeal disposed off by a single Judge of the High Court—Subsequent petition for amendment of the judgment and decree filed—Letters Patent Appeal filed and dismissed in limine *during the pendency of the petition for amendment—Power of Court to order amendment.*

Civil Procedure Code (V of 1908), *section* 152 *and Order* 41, *rules* 11 *and* 32—*Power of Court which passed a decree to amend the same—Effect of dismissal of an appeal* in limine.

It is a well-settled proposition of law that a Court which passed a decree has got jurisdiction to amend the same until it is superseded in appeal or revision. Where the decree of a lower Court is confirmed, reversed or varied by an appellate Court, it is superseded by the appellate decree and any amendment to the same can be done only by the appellate Court. But where an appeal is dismissed *in limine* or withdrawn or portions of the decree are outside the scope of the appeal, the lower Court is still entitled to amend the decree or such portion of it.

Unless the lower Court's decree has become merged in an appellate Court's decree by a disposal on merits of the appeal, the lower Court is the proper Court for amending the decree, in which the mistake occurs and which is the substantive decree to be executed.

A.I.R. 1953 Bom. 122: I.L.R. 11 Pat. 409 and I.L.R. 21 Bom. 548, followed.

(1946) 1 M.L.J. 393, differed.

Difference between the dismissal of an appeal under Order 41, rule 11 and Order 41, rule 32, discussed and case law referred.

R. Sundaralingam, for Petitioner.

K. S. Desikan and *K. Raman*, for Respondents.

R.M. ——— *Orders accordingly.*

Panchapakesa Ayyar and Marey Joseph *v.*
Basheer Ahmed Sayeed, JJ. Jayub Mohamed.
26th February, 1958. S.A. No. 1065 of 1954.

Specific Relief Act (I of 1877), *section* 27 (b)—*Transferee for value without notice—'Paid his money'—Meaning of—If payment should be only in cash.*

The phrase 'paid his money' in section 27 (*b*) of the Specific Relief Act means paid money or money's worth and would include payment in cash or by adjustment of a debt due. Section 27 (*b*) can be taken advantage of in all cases where the transferee has parted with his money by way of cash, currency notes or gold or money's worth by way of adjusting a pre-existing debt provided he had no notice, actual or constructive, of any prior agreement.

T. P. Gopalakrishnan, for Appellant.

T. T. Srinivasan and *C. Sampath*, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramaswami, J. Rahamath Bi *v.* Ahmed Mohideen.
27th February, 1958. S.A. No. 1163 of 1955.

Mahomedan Law—Maintenance—Duty of father to maintain daughter—Extent of.

Under the Muslim Personal Law a father is bound to maintain his daughter until she is married. The fact that the daughter has attained puberty does not absolve the father of his duty to maintain his daughter till she is married. The liability of the father is absolute and is not dependant on his property. So long as the father is capable of earning his indigence cannot affect the duty.

K. V. Srinivasa Ayyar, for Appellant.
M. R. Narayanaswami, for Respondent.
R.M. *Appeal allowed in part.*

[FULL BENCH.]
Rajagopalan, Balakrishna Ayyar and Ramachandra Iyer, JJ. An Advocate, *In re.*
28th February, 1958. R.C. No. 97 of 1957.

Legal Practitioners Act (XVIII of 1879)—Professional conduct—Advocate who has given opinion for one side in a criminal case—If could accept an engagement for the opposite side at a subsequent stage of the case.

Whatever may be the position in civil cases an advocate who has given an opinion for one side in a criminal case should not accept an engagement at subsequent stage of the case for the opposite side. The employment places him in a position of confidence and imposes on him a duty not to use the information so gained, unwittingly or otherwise, to the detriment of his client. That duty continues even after the relationship of advocate and client ceases and does not depend on the fact whether the party employs him in the subsequent stage of the case or not. The office of a Public Prosecutor is one of considerable prestige and responsibility and nothing should be allowed to be done which would have the effect of impairing the confidential advice which he is often called upon to give or by undermining the confidence of the public in the purity of Criminal Law Administration. It is improper for an advocate who held the office of a Public Prosecutor or was engaged as a Special Prosecutor to accept an engagement for the defence in a case in which at an earlier stage he advised or gave an opinion to the Prosecutor or appeared for the prosecution at the stage of interlocutory applications like bail, etc.

The Advocate-General (*V. K. Thiruvenkatachari*), for Petitioner.
M. S. Venkatarama Ayyar and *K. Kalyanasundaram*, for Respondents.
The Additional Government Pleader (*K. Veeraswami*), for the State.
R.M. *Respondent censured.*

[FULL BENCH.]
Rajamannar, C.J., Panchapakesa Ayyar and Ramachandra Iyer, JJ. Board of Revenue *v.* Simson & McConochie, Ltd.
3rd March, 1958. R.C. No. 23 of 1957.

Stamp Act (II of 1899)—Document whether lease or mortgage—Lease deed with a right of subrogation in favour of the lessee in respect of a mortgage discharged by the lessee by advancing the requisite amount as rent advance—Document if amounts to a mortgage.

Transfer of Property Act (IV of 1882), section 92 (3)—Subrogation—Nature of.

An agreement as to right of subrogation to the rights of a mortgagee as contemplated under section 92 (3) of the Transfer of Property Act is not by itself a mortgage. Hence whereunder a registered lease deed the lessee advances money to his lessor to pay off a mortgage on the leased property, which advance is to be adjusted towards the monthly rents payable under the lease, the mere fact that the lease deed provides that the lessee shall be subrogated to the rights of the mortgagee whose mortgage was redeemed out of the advance paid by him will not make the lease deed a mortgage with possession for purposes of stamp duty, if the deed is in all other respects only a lease deed.

The Government Pleader (*B. V. Viswanatha Iyer*), for Petitioner.
N. K. Mohanarangam Pillai and *N. K. Pattabhiraman*, for Respondents.
R.M. *Answer accordingly.*

Panchapakesa Ayyar, J. Nagaraja Dikshithar *v.* Sundaresa Sastrigal.
3rd March, 1958. A.A.A.O. No. 8 of 1956.

Madras Agriculturists Relief Act (IV of 1938), *section 9-A—Transfer of mortgagees' interest during the specified statutory period—Exemption from scaling down—Object of—Scope of exemption.*

Under the provisions of section 9-A of the Madras Agriculturists Relief Act where the mortgagees' interest is transferred in whole or in part during the relevant period between 30th September, 1937 and 30th January, 1948, is transferred *bona fide* and for valuable consideration such transferee is entitled to immunity from the scaling down provisions of the section. The object of this was to protect those transactions that were entered into on the basis of the law then prevailing as regards usufructuary mortgages. It is true that the benefit of the immunity can be claimed by transferees of the mortgagees' interest provided the transfer is within the period mentioned and is of the entirety of the mortgagees' interest even though the transfer is in respect of certain items of a number of items of the mortgaged properties. But a sub-mortgagee or lessee cannot be said to be a transferee of the entire rights of a mortgagee and as such cannot claim the immunity from scaling down.

(1956) 1 M.L.J. 589 and (1954) 1 M.L.J. 578, followed.

G. R. Jagadisan, for Appellant.

P.N. Venugopalan, N. Sivamani, A. Nagarajan and *A. Viswanathan*, for Respondents.

R.M. ——— *Appeal allowed : Leave granted.*

Rajamannar, C.J., and Thiruvengada Mudaliar *v.*
Ramachandra Iyer, J. Narayana Reddiar.
4th March, 1958. L.P.A. No. 195 of 1957.

Practice.—Declaratory suits—If maintainable apart from section 42, Specific Relief Act—Specific Relief Act (I of 1877), *section 42—If exhaustive of the category of declaratory suits.*

Section 42 of the Specific Relief Act is not exhaustive of the category of declaratory suits and suits for a mere declaration are permissible though they are not of the nature specified in the said section. A suit by a decree-holder for a declaration that a sale of the property of the judgment-debtor in execution of a decree obtained by another creditor is fraudulent and collusive and that the judgment-debtor still continued to be the real and beneficial owner of the property sold is maintainable.

I.L.R. (1943) Mad. 47 : (1942) 2 M.L.J. 213, followed.

(1944) 2 M.L.J. 231, doubted and distinguished.

T. C. A. Bhashyam and *T. C. A. Tirumalachari*, for Appellant.

U. Somasundaram, for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and Ramachandra Iyer, J. Pushpavathi *v.* Narayana.
15th March, 1958. L.P.A. No. 224 of 1954.

Letters Patent (Madras), clause 15—*Appeal against an order in an appeal against an appellate order of a Subordinate Court—Leave of Court—Necessity.*

Where an appeal under clause 15 of the Letters Patent is sought to be filed against an order of a Judge of the High Court passed in exercise of the Appellate jurisdiction in respect of a decree or order made in the exercise of its appellate jurisdiction by a Subordinate Court, leave of the Judge who made the order should be obtained without which no such appeal is maintainable.

(1938) 1 M.L.J. 402, referred.

E. R. Krishnan, for Appellant.

M. S. Venkatarama Iyer, for Respondent.

R.M. ——— *Preliminary objection upheld.*

Rajamannar, C.J., and Ramachandra Iyer, J. Ramanuja Naicker *v.* Seethalakshmi Ammal.
18th March, 1958. L.P.A. No. 199 of 1957.

Execution—Declaratory decree that the decree-holder will be entitled to certain sums the payment of which is charged on certain properties—No direction as to payment by judgment-debtors or sale of the charged properties in default of payment—Executability.

A decree which only declares the rights of a party to certain amounts and that the said amount will be a charge on certain properties and there is no direction that the amount should be paid by the other party on or before a specified date and that in default of such payment the properties charged should be sold, is not executable as such in the form in which it is drafted. The proper course in such cases is to apply to the Court to make suitable modifications to make the decree in form executable.

A. K. Annaswami Ayyar, V. Ratnam and *A. Ramanathan*, for Appellant.

G. Ramanujam and *V. R. Venkataswami*, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J. Mahaboo Bivi *v.* Abdul Hameed.
20th March, 1958. C.R.P. No. 75 of 1958.

Madras Court-fees and Suits Valuation Act (XIV of 1955), sections 28 and 53 (1)—Suit for possession of trust property—Pecuniary jurisdiction of Court—Determination of—Computation of Court-fee—One-fifth of the market-value of the property subject to a maximum fee of Rs 200—Effect of—Madras Civil Courts Act (III of 1873), section 12.

Section 28 of the Madras Court-fees and Suits Valuation Act, which relates to particular classes of suits in regard to trust property. The valuation for purposes of Court-fees is to be one-fifth of the market value of the property. But there is also a maximum Court-fee prescribed under the section for those classes of cases. The effect of this is that for purposes of pecuniary jurisdiction of the Court and the quantum of Court-fee the valuation is on the basis of one-fifth of the market-value of the property, but a concession is shown by way of a ceiling on the quantum of Court-fee. Reading sections 28 and 53 (1) of the Act together the pecuniary jurisdiction of Court for such suits has to be determined only on the basis of the market-value and not on the concessional ceiling on the quantum of Court-fee payable.

M. M. Ismail, for Petitioner.

T. S. Kuppuswami Ayyar and The Additional Government Pleader (*K. Veeraswami*), for Respondents.

R.M. ——— *Petition allowed.*

Somasundaram, J. Swamiappa Mudaliar *v.* Ponnammal.
24th March, 1958. Cr. Rev. C. No. 806 of 1957.

Madras Buildings Lease and Rent Control Act (XXV of 1949) and Criminal Procedure Code (V of 1898), section 476—Leave to prosecute for an offence relating to documents filed before Rent Controller—Leave refused—Remedy of party—If by way of civil or criminal revision.

Where a party applies to the Rent Controller for prosecuting a person for filing a false document in proceedings before him and the Rent Controller refuses to initiate proceedings the remedy of the party is to appeal to the Civil Court and apply in revision to the High Court under section 115 Civil Procedure Code, as the matter relates to proceedings before a civil Court, and a civil Court does not cease to be so when considering an application under section 476, Criminal Procedure Code.

Messrs. Row and Reddy and *A. Madhavan*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

T. R. Ramachandran, for Respondents Nos. 1 and 2.

R.M. ——— *Petition dismissed.*

Rajagopalan and Balakrishna Ayyar, JJ.
25th March, 1958.

C. M. Kothari *v.* Commissioner of Income-tax.
R.C. No. 12 of 1954.

Income-tax Act (XI of 1922), *section* 16 (3) (a) (*iii*)—*Scope of—Direct or indirect transfer of assets by husband to the wife—What amounts to.*

It is no doubt true that section 16 (3) (*a*) (iii) of the Income-tax Act provides that in computing the total income of an individual so much of the income of the wife of such individual which arises from assets transferred directly or indirectly by the husband to the wife otherwise than for adequate consideration, etc., will also be included. But mere evidence of a cross-gift or cross-transfer with nothing more may not lead to an inference of an indirect transfer of assets nor the fact that such cross-transfers were simultaneous in point of time. Unless it is found that the cross-transfers constituted a single transaction and there is a mutuality between the two transfers in the sense of one forming the consideration of the other, such an inference is not possible.

M. Subbaraya Ayyar, V. Sethuraman and *S. Padmanabhan*, for Petitioner.

C. S. Rama Rao Sahib, Special Counsel for Income-tax, for Respondent.

R.M. — *Reference answered accordingly.*

Somasundaram and Basheer Ahmed Sayeed, JJ.
31*st March*, 1958.

Fernandez, *In re.*
Crl. Appeal No. 629 of 1956.

Criminal Law Amendment Act (XLVI of 1952), *sections* 7 *and* 9 (6)—*Special Judge acting under—Status of—If a Magistrate or Sessions Judge—Special Judge if could pronounce judgment on the basis of the evidence recorded by his predecessor in office—Criminal Procedure Code (V of* 1898), *section* 350—*Applicability to Special Judges under Central Act XLVI of* 1952—*Criminal Law Amendment Act (II of* 1958), *section* 8 (3-*A*)—*Effect of new amendment.*

Per Full Bench : *Rajagopalan, Somasundaram* and *Balakrishna Iyer, JJ.* (4th March 1958).

The ordinary rule in Criminal Procedure Code is that judgment in any case should be delivered only by the Judge who has heard the whole of the evidence in the case. The only exception to this rule is that created by section 350, Code of Criminal Procedure, which empowers a Magistrate to dispose of a case on evidence heard in part by himself and in part by his predecessor or predecessors. But even this exception is not applicable to a Court of Sessions.

An analysis of the four sub-sections of section 8 of the Criminal Law Amendment Act, 1952, shows that a special Judge officiating under that Act is neither a Magistrate nor a Sessions Judge. He is deemed to be a Magistrate for certain purposes and he has got the powers of a Sessions Judge for certain other purposes. He occupies an anomalous position and will be a Court constituted under any other law as contemplated by the classification of Criminal Courts under section 6 of the Criminal Procedure Code.

Having regard to the cardinal rule of procedure in criminal matters and having regard to the pattern of legislation creating special Courts and investing them with specific powers on procedural matters, in the absence of express provision in any statute, it cannot be presumed that the Legislature intended to depart from the normal procedure applicable to trial of criminal cases when they are tried by special Courts. The Criminal Law Amendment Act, 1952 (before its recent amendment by Act II of 1958) did not contain an express provision, as many similar legislations of the time did, similar to the one contained in section 350 of the Code of Criminal Procedure, dispensing with *de novo* trial in cases of change in the personnel of the special Court trying a case under that Act. Hence the right of an accused to demand a *de novo* trial in such cases could not be negatived as section 350 of the Code of Criminal Procedure was not made applicable to the Special Court.

(Effect of amendment of section 350, Criminal Procedure Code, by Amending Act, 1955, giving the Court discretion in the matter indicated)

A.I.R. 1954 Mad. 350, M.L.J. held not good law.

A.I.R. 1954 Pat. 543, approved.

I.L.R. [illegible] Mad. 112, referred.

(Per Division Bench *Somasundaram* and *Basheer Ahmed Sayeed, JJ.*) (31st March, 1958).

Since the expression of the opinion of the Full Bench, section 350 of the Code of Criminal Procedure has been expressly made applicable to proceedings before a Special Judge under Central Act XLVI of 1952 by Amending Act II of 1958. The conviction based on evidence partly recorded by the Special Judge and partly by his successor before the amendment is void and should be set aside.

P. N. Menon and *S. Pichai*, for Appellant.

The Advocate-General (*V. K. Thiruvenkatachari*) and the Public Prosecutor (*P. S. Kailasam*) for the State.

R.M. ——— *Conviction set aside: No retrial.*

Balakrishna Ayyar, J. 4th April, 1958. — Depty Lal *v.* Collector of Nilgiris. W.P. No. 76 of 1958.

Administration of Evacuee Property Act (*XLIV of* 1954), *section* 29—*Property of an evacuee in possession of a tenant transferred to another—Transfer—When takes place.*

It is true that where the property of an evacuee, which is in lawful possession of any person, is transferred to another, under section 29 of the Administration of Evacuee Property Act, the person in possession is not liable to be evicted therefrom for a period of two years. But this right of the person in possession could arise only on the transfer being complete, *i.e.*, when the sale certificate is issued to the purchaser. The mere fact that a property was sold in an auction and a particular bid was accepted by the Settlement Commissioner does not make the transfer complete to attract the provisions of section 29 of the Act.

R. Gopalaswami Ayyangar, for Petitioner.

The Government Pleader (*B. V. Viswanatha Iyer*), for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan, J. 15th April, 1958. — Seenu & Co. *v.* State of Madras. W.P. No. 771 of 1957.

Drug and Magic Remedies (*Objectionable Advertisements*) *Act* (*XXI of* 1954), *section* 14 (d)—*Power of State Government under to revoke a permission once granted—Nature of.*

The power of the State Government under section 14 (*d*) of the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954, to sanction advertisements carries with it the power to revoke the sanction in appropriate cases. The power to revoke a sanction once granted is as much a statutory power as the power to grant the sanction. An order revoking a sanction might be administrative in scope but as it is in the nature of cancelling a license once granted it cannot be done in violation of the elementary principle of natural justice, *viz.*, that the party affected should be heard before an order detrimental to his interests is made by the Statutory Authority. The State Government should itself apply its mind before passing an order under section 14 (*d*) and an order merely in obedience to a direction from the Government of India will not be valid.

K. V. Venkatasubba Ayyar, R. M. Seshadri and *S. Bhaskaran*, for Petitioner.

The Additional Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Rule absolute.*

[END OF (1958) 1 M.L.J. (N.R.C.)]